

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-1358

To be argued by
WILLIAM L. RICHMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

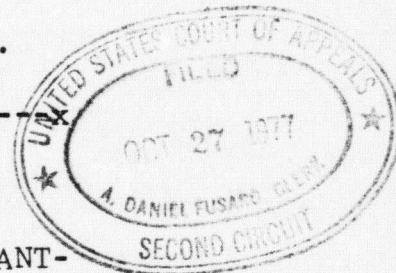
Plaintiff-Appellee,

-against-

EUGENE CRUTCH,

Defendant-Appellant.

BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT EUGENE CRUTCH



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FOR THE SECOND CIRCUIT

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Plaintiff-Appellee,

-against-

EUGENE CRUTCH,

Defendant-Appellant.
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BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT EUGENE CRUTCH

Preliminary Statement

Defendant, Eugene Crutch, appeals from a judgment of conviction rendered after trial before United States District Judge Robert L. Carter and a jury, convicting him of conspiracy (Count One), the use of wire and radio communication in interstate commerce in furtherance of a scheme or schemes to defraud involving transportation in interstate commerce, stolen and fraudulently obtained goods and merchandise; and a single overt act charging him with the transportation in interstate commerce of a motor vehicle (Count Twenty-Nine);

and the sentence of two years.

Timely notice of appeal was filed, and by directive and pursuant to the rules of this Court, William L. Richman was directed to prosecute this appeal as counsel for defendant-appellant. Defendant-appellant is presently released on bail pending the determination of this appeal.

Indictment

The indictment in substance alleges:

1. A conspiracy between six named defendants and four co-conspirators involving the sale in interstate commerce of goods and merchandise including automobiles "purchased" through the use of counterfeit checks and negotiable instruments in that:
 - (a) Between January 1 and November 1, 1975, defendant Isiah Crutch obtained quantities of counterfeit checks from defendant Louis Bas, Jr.
 - (b) Co-conspirator Susan R. Abbott contacted various business organizations by telephone and arranged for the purchase of goods and merchandise and by the use of counterfeit checks consummated the transactions and did transmit gold coins and other merchandise in interstate commerce.
2. The indictment lists (Conspiracy Count) additional transactions involving the

use of wire communication and counterfeit instruments by Isiah Crutch, Susan R. Abbott, Leonard J. Carro, Hee Soo Kim, Jerold Michael Heitzner, Patrick C. Rio, Eli Niccolo and others.

Defendant Eugene Crutch allegedly handed co-conspirator Lloyd Williams an envelope containing a counterfeit check on December 24, 1975, (77) and that on December 31, 1975, Eugene Crutch and co-conspirator Lloyd Williams drove a Lincoln automobile from New York to New Jersey. (79)

3. A substantive count (Twenty-Ninth) charges that defendant Eugene Crutch "unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle...knowing the same to have been stolen and taken by fraud.

Statement of Facts

The indictment charges six named defendants together with four co-conspirators with fraud and conspiracy involving forged and counterfeit securities in the purchase of goods and merchandise and transported same in interstate commerce. The conspiracy allegedly continued from January through October 1975 when Isiah Crutch, the principal conspirator was apprehended and incarcerated. Two defendants pled guilty to various charges, leaving four defendants before this Court.

The Government produced numerous witnesses including co-conspirators Susan Abbott and Lloyd Williams on its direct case in an effort to connect Eugene Crutch with this alleged conspiracy. The Government's case in this memorandum is necessarily limited in its relevance to the finding of guilt as to Eugene Crutch.

Susan Abbott, for the Government, testified that though a comparatively young woman, she had been convicted and incarcerated for wire fraud, for interstate transportation and various other charges, none of which were related to the instant indictment and confessed to an agreement with the Government with respect to other pending charges, met with Isiah Crutch and together masterminded a plan whereby they obtained counterfeit bank checks and proceeded to purchase goods and merchandise consisting of gold coins, jewelry, furs, automobiles and other products from the early part of 1975, to about October when Isiah Crutch was incarcerated. Thereafter, she acted alone in the continuation of the conspiracy.

In an effort to involve defendant-appellant, Susan Abbott testified to the purchase of an automobile by Elie Nicoleau from a Mrs. Betty Harris with the use

of a counterfeit check. (233-234) That because of some difficulty over license plates, she phoned Eugene Crutch "and asked him if he could assist me and that he said that he would," (234) and that subsequently Eugene told her that he had parked the car.

This is the only testimony involving Eugene Crutch in the alleged conspiracy.

Her testimony in support of the substantive count charging Eugene Crutch together with Isiah Crutch and Louis Bas, Jr., with interstate transportation of a Lincoln automobile (Count Twenty-Nine) is, to say the least, confusing and inconsistent. Though the alleged conspiracy terminated with the arrest and incarceration of Isiah Crutch in October 1975, this witness, prodded by the Government, seeks to tie in the occurrence of Christmas 1975 in full payment for the leniency she was promised by the Government.

It is her testimony that on or about December 23, 1975 "Eugene came to the house...65 East 11th Street," and asked for a blank check that he could use to purchase a car. (253, 11. 2-3) That Eugene completed the check on Barclays in the sum of \$9,850.00, and that later on that night she received a telephone call from a friend of

Eugene's that Eugene had been arrested. (254, 11. 5-7) Since this did not conform with the Government's case, and after further leading and prodding by the Government, the witness contradicted her earlier testimony to the effect that several days after December 23, Eugene came to the house with a car and took her for a ride downtown. That they, referring to Lloyd Williams and Eugene, stated that they were going to sell the car. This muddled testimony prompted the Court to comment that "I'm getting confused." (256, 11. 3-5)

In this connection the Government then produced co-conspirator Lloyd Williams, who admitted that he was awaiting sentence after being convicted of possessing a stolen article (the subject automobile under substantive Count Twenty-Nine), a sentence to be imposed after his testimony in the instant case could be evaluated.

He testified that he met Eugene in December 1975 and asked him to look at a car owned by a Mr. Henderson (829, 11. 16-18) and that subsequently the car was purchased with the Barclay cashier's check and turned over to Eugene Crutch. (832, 11. 2-11) Several days later Williams drove the car to New Jersey and visited several dealers. It is his testimony that he drove the car to

New Jersey and that he negotiated with several dealers in an effort to obtain a purchaser. (833) That while both Williams and Eugene Crutch were in the car, they were arrested by the New Jersey police. (836, 11.2-6)

Questions Presented

I

Whether the judgment of conviction is factually supported by the record beyond a reasonable doubt.

- (a) As to the conspiracy count (Title 18, United States Code, §1343, §2312 and §2314).
- (b) As to the substantive count (Twenty-Nine), Title 18, United States Code, §2312 and §2.

I

The evidence as a whole is insufficient to support the verdict.

(a) As to the conspiracy count: This circuit has consistently held that a conviction for conspiracy cannot stand absent some evidence that the alleged co-conspirator knowingly and wilfully became a participant in the conspiracy, United States v. Johnson, 513 F. 2d 819, 823 (1974); United States v. Cirillo, 499 F. 2d 872, 883 (1974); United States v. Infanti, 474 F. 2d 522, 526 (1973); United States v. Amino, 321 F. 2d 509 (1963).

In Johnson, supra, this court considered fully the minimal proof required to support a charge that the defendant was an aider and abettor and a member in a conspiracy.

Johnson was a passenger in an automobile owned and operated by Loewe when the drug was found inside the panel of the passenger door; Johnson knew that Loewe was on probation for grand larceny and was not allowed to leave the United States; Johnson made false statements to the custom agents and that he lied to the arresting officers. This court rejected the Government's argument "that the accumulative weight of the evidence of Johnson's

presence in Loewe's automobile at the time the drugs were found, his close association with Loewe, his false exculpatory statements and his general lack of credibility were sufficient from which the jury could properly find or infer beyond a reasonable doubt, that the accused is guilty (citing cases). The decision continued (p. 823):

It is well established, however, that in order to be an aider and abettor, the defendant must associate himself with the venture in some fashion, "participate in it as something that he wishes to bring about," or "seek by his action to make it succeed." United States v. Peoni, 100 F. 2d 401, 402 (2 Cir. 1938). See also Nye & Nissen Corp. v. United States, 336 U.S. 613, 619, 69 S.Ct. 766, 93 L.Ed. 919 (1949); United States v. Terrell, 474 F. 2d 872, 875 (2 Cir. 1973).

The rule is similar with respect to establishing membership in a conspiracy. See United States v. Cirillo, 499 F. 2d 872, 883 (2 Cir. 1974) ("There must be some basis for inferring that the defendant knew about the enterprise and intended to participate in it or to make it succeed"); United States v. Cianchetti, 315 F. 2d 584, 588 (2 Cir. 1963) (co-conspirator must make an "affirmative attempt" to further the purposes of the conspiracy); United States v. Falcone, 109 F. 2d 579, 581 (2 Cir. 1940) (co-conspirator must "promote [the] venture himself...have a stake in its outcome").

In Cirillo, supra, the court held at page 883:

...mere association with persons engaged in a criminal enterprise or even presence at the scene of their crime will ordinarily

not be enough. There must be some basis for inferring that the defendant knew about the enterprise and intended to participate in it or to make it succeed. Compare United States v. Amino, 321 F. 2d 509 (2d Cir. 1963), cert denied, 375 U.S. 974, 84 S. Ct. 491, 11 L.Ed. 2d 418 (1964) ("mere meeting was no evidence [that persons were] conspirators") and United States v. Fantuzzi, 463 F. 2d 683 (2d Cir. 1972) with United States v. Cassino, 467 F. 2d 610 (2d Cir. 1972), cert. denied, 410 U.S. 913, 93, S.Ct. 959, 35 L.Ed. 2d 276 (1973).

In Garguilo, supra, the court reversed the conviction of one of the defendants, Macchia, despite some evidence that Macchia was close enough to the transactions, to the conversations, to the general atmosphere of the transactions to know what was going on. The reversal was predicated on the general requirement "that mere presence and guilty knowledge on the part of Macchia would not suffice unless they were convinced beyond a reasonable doubt that Macchia was doing something to forward the crime--that he was a participant rather than a knowing spectator (254)."

In the same context specifically with respect to aiding and abetting this court held:

...But knowledge that a crime is being committed, even when coupled with presence at the scene, is generally not enough to constitute aiding and abetting. In Nye & Nissen v. United States, 336 U.S. 613, 619, 69 S.Ct. 766, 93 L.Ed. 919 (1949), the Supreme Court said, quoting Judge Learned Hand in United

States v. Peoni, 100 F. 2d 401, 402
(2 Cir. 1938).

"In order to aid and abet another to commit a crime it is necessary that a defendant 'in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed.'"

Infanti, supra, involved a conspiracy to sell stolen securities. Kurtz, accompanied by Infanti traveled together to Frankfurt, was present in a hotel room during discussions with prospective purchasers, then went to London after negotiations broke off. No proof was presented that Kurtz knew the securities were stolen, nor that he could set a price for them, nor did he have any say as to their transfer sufficient to infer constructive possession. The court dismissed the conspiracy count and the Government withdrew the aiding and abetting charge.

This court, in reversing Kurtz's conviction, held:

Thus, the Government must rely on evidence other than Kurtz's actual or constructive possession to establish that he knew the securities were stolen. It is true that the circumstances of the proposed stock transfer were surreptitious and it would have been obvious to Kurtz, a lawyer, that Infanti's dealings were less than legitimate. But Kurtz's presence in the hotel room and

the lack of evidence of his participation in the conversations that occurred there--at some point Infanti said to him, "not now, Nat," or words to that effect--do not establish the conclusion beyond a reasonable doubt that he was aware that the securities were stolen. Cf. United States v. Garguilo, 310 F. 2d 249, 253 (2d Cir. 1962); United States v. Minieri, supra, 303 F. 2d at 557 (aiding and abetting not proven from presence where an illegal act occurs). Without some further evidence of the quality of his participation, Kurtz's presence where illegal activity was being transacted does not establish his knowledge of the nature of the activity. See United States v. Cianchetti, 315 F. 2d 584, 588 (2d Cir. 1963).

At bar there is not one iota of testimony that this defendant purposely and deliberately entered into any agreement with a particular purpose and specific intent to do that which the law forbids. Absent evidence that he acted wilfully and knowingly, conviction for conspiracy cannot stand.

This record does not contain sufficient evidence from which the jury could have found that Eugene Crutch knowingly and wilfully participated in a conspiracy. The record does not contain a single word of conversation testimony. The only evidence presented to connect Eugene Crutch to the conspiracy was through Susan Abbott in connection with an automobile allegedly purchased by Elie Nicoleau and some problem with respect

to license plates. It is Abbott's testimony that she phoned Eugene Crutch "and asked him if he could assist (her) and tnat he said he would." (234, 11. 7-9)

There is absolutely no testimony in this record that Eugene Crutch had knowledge of the alleged conspiracy or had knowledge of the transaction involving the automobile in question. His mere acquiescence to Abbott's request for assistance does not fit within the requirement that Eugene Crutch knowingly and wilfully associated himself with the conspiracy with knowledge of its alleged criminal purpose. Absent the vital elements of knowledge and wilfulness, the conspiracy count cannot stand. At most, this evidence could support a finding of an overt act. Such an act, however, without proof of participation is not enough to establish a conspiracy (United States v. Williams, 503 F. 2d 50 [6th Cir. 1974]; United States v. Craig, 522 F. 2d 20 [6th Cir. 1975]).

Similarly in Williams (supra), the court stated (at page 54):

[8] With regard to Williams Jr., we also find the record lacking in any evidence that he entered into an agreement with Williams, Sr. Now do we find any evidence that Johnson and Williams, Jr. committed the overt act in the motel room with the knowledge that it was in furtherance of the alleged object of the conspiracy.

In another context involving a narcotics conspiracy, this court very recently distinguished between a major participant and a peripheral figure by applying the doctrine enunciated in the single act line of cases specifically stating:

We think he is entitled to the benefit of the single act line of cases, led by *United States v. Reina*, 242 F. 2d 302, 306 (2d Cir.), cert denied, 354 U.S. 913, 77 S.Ct. 1294, 1 L.Ed. 2d 1427 (1957), the one most specifically in point being *United States v. Aviles*, 274 F. 2d 179, 190 (2d Cir.), cert. denied, *Evola v. United States*, 362 U.S. 974, 80 S.Ct. 1057, 4 L.Ed. 2d 1009 (1960). See also *United States v. DeNoia*, 451 F. 2d 979 (2d Cir. 1971). This was a large, multi-party conspiracy extending over a period of years. Alonzo's dealings were on one occasion only, with a lesser figure, for a small amount. Viewed in the entire context of the conspiracy his act qualitatively is minuscule. True, he indicated that he had been a dealer before and that he wanted to start dealing again, but he made no other purchase. True also, he was present at the apartment when Pan-nirello made a delivery to Basil Hansen, but presence alone is not enough. See *United States v. Terrell*, 474 F. 2d 872, 875-76 (2d Cir. 1973). When the Government throws out its big conspiracy net to catch the big fish in the criminal sea, it has to be aware that an occasional minnow may wriggle free.

(*United States v. Tramunti*, 513 F. 2d 1087 [2d Cir. 1975])

It is therefore submitted that his mere presence without proof of knowledge, without proof of

wilfulness, without proof of doing something in furtherance of the venture, is not the evidence beyond a reasonable doubt sufficient to sustain the conviction for conspiracy nor of aiding and abetting.

(b) As to the substantive count: Count Twenty-Nine of the indictment charges that "ISIAH CRUTCH, LOUIS BAS, JR. and EUGENE CRUTCH..." transported in interstate commerce a Lincoln automobile from New York to New Jersey. On December 31, Isiah Crutch was in jail (having been incarcerated on October 25, 1975), when the conspiracy alleged in Count One terminated. It is Susan Abbott's testimony that after Isiah was arrested, she continued on her own so that the charge encompassed in Count Twenty-Nine was in no way related to the conspiracy, which finds further support in the fact that both Isiah Crutch and Louis Bas, Jr. were acquitted by the jury in connection with Count Twenty-Nine.

Government's witness Lloyd Williams testified that he examined and negotiated and concluded the purchase of the Henderson automobile (824, 829, 831) and that he drove the automobile from New York to New Jersey (833-834) and that he was arrested in New Jersey with Eugene Crutch in possession of the subject automobile (834). Williams

further testified that the stolen property charge in connection with this transaction would be dropped by the New Jersey authorities if he testified for the Government provided his testimony was favorable. (840) In response to question, "Eugene Crutch didn't steal the car?" A. "I did." (850, 11. 20-21) He was subsequently tried in New York County for this larceny, convicted and awaiting sentence pending the conclusion of his testimony in the instant case. (850)

It is submitted that this count was included in the indictment and merged with this trial solely to bolster the Government's effort to connect Eugene Crutch with the conspiracy. This is quite evident from the fact that Eugene Crutch was not indicted nor tried with Williams in connection with the possession indictment pertaining to the subject automobile. (850)

It is, therefore, submitted that this record does not support the guilty verdict with respect to Count Twenty-Nine.

CONCLUSION

The Government failed to establish that this defendant directly or indirectly, circumstantially or

inferentially participated in a plan to accomplish an unlawful act. The law clearly requires more than this record reveals to support a conviction for conspiracy. This record is completely devoid of material facts; conversation testimony; direct participation in direction, in policy, in everyday activity of a co-conspirator.

The guilt of Eugene Crutch was not established beyond a reasonable doubt. The conviction should be reversed.

Respectfully submitted,

WILLIAM L. RICHMAN
Attorney for Defendant-
Appellant

A P P E N D I X

PAGINATION AS IN ORIGINAL COPY

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CRIMINAL JUSTICE SYSTEM REPORT

PETTY OFFENSE FO 0208 1 0857 U.S. CRUTCH, EUGENE

OTHER MINOR OFFENSE MO

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FELONY FEL X

Case Filed Mo Day 04 07 77 0246 04

No. of Defs 06

JUVENILE

U.S. MAG. CASE NO.

U.S. TITLE/SECTION 18:371 18:2312

OFFENSES CHARGED Consp. to commit wire fraud Interstate transportation of stolen motor vehicle

ORIGINAL COUNTS 1 29

U.S. MAG. CASE NO.

AMT. Set

Set

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Date

U.S. MAG. CASE NO.

AMT. Set

Set

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Date

U.S. MAG. CASE NO.

AMT. Set

Set

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Date

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Begin

INDICTMENT X Information 4-7-77

ARRAIGNMENT 4-14-77

TRIAL 6-20-77

6-30-77

9-7-77

MAGISTRATE

DATE

INITIAL/NO

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION OR REMOVAL HEARING

WAVED

NOT WAVED

INTERVIEWING INDICTMENT

OUTCOME

DISMISSED

HELD FOR CLERK OR OTHER PURPOSES

HELD FOR CLERK OR OTHER PURPOSES

U.S. Attorney or Asst.
Jeremy G. Epstein
791-0036

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1. Crutch-01, Bas-02, Caro-03, Kim-05, Doe-06

DATE (DOCUMENT NO.) PROCEEDINGS

4-7-77 Filed Indictment & Ordered sealed. B/W Ordered.Lasker, J. B/W Issued.

4-12-77 Indictment Ordered unsealed.Lasker, J.

4-14-77 Deft. (atty. Joseph K. McKay present) pleads not guilty. Bail reduced to \$5,000 unsecured PRB. Bail limits to include the State of New Jersey. Deft. to report to Pre-trial Services on Monday of each week. Case assigned to Carter, J. for all purposes.Lasker, J.

4-18-77 Filed NOTICE OF APPEARANCE - of Joseph K. McKay.

4-14-77 Filed APPEARANCE BOND for \$5,000.00. Clerk.

4-18-77 Filed papers rec'd from the U.S. Mag's Office: Docket Sheet, Warrant for arrest of Deft, exc: 4-13-77, Disposition Sheet, Notice of Appearance of J.K. McKay, and Financial Affidavit CJA 23.

4-19-77 Filed REMAND ISSUED. 4-14-77

4-19-77 Filed Superseding Indictment & referred to Carter, J.Stewart, J.

Cont'd on page 2

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OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(n)

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				LETTER CODE
			Interval (a)	Start Date (b)	LT Code (c)	Total Days (d)	
4-21-77	Pre-trial Conf, Held. Govt. moves orally to dismiss this original indictment. Application granted. CARTER, J.		3	4-21-77	E	1	A. Examination of records for materiality of physical evidence, excluding the U.S.C. 4242.
4-21-77	Deft w/a/p Joseph Mc Kay, moves to be relieved, application is granted. Deft is directed to report to U.S. Magistrate for appointment of new counsel. CARTER, J.						
4-25-77	Filed MAGISTRATE'S FINAL COMMITMENT - Bail set at \$500.00						B. NARA Exam- nation for U.S.C. 2262.
5-2-77	Filed Deft's NOTICE OF MOTION requesting certain statements etc.... Affidavit attached.						C. State or Federal trials on other charges.
4-28-77	Filed CJA 20 - Appointment & voucher for counseling services. Copies 2 & 5.						D. Interdustry Appeals.
5-4-77	Filed Gov'ts Memorandum in response to deft. Eugene Cruth's Motion for pre-trial discovery.						E. Hearing on pretrial motion.
5-12-77	Filed Memo-End on Notice of Motion dtd: 5-2-77. The deft's motion was filed without supporting memorandum. Mr. Richman was only recently appointed counsel and therefore was not at the first pre-trial conference at which time it was made clear that all motions must be accompanied by supporting memorandum or the motions would not be considered. That requirement was waived in this instance but it is still operative as a requirement in the case and is now applicable to Mr. Richman and all other counsel...So Ordered...Carter, J. M/N						F. Transfers from other districts (per Fed. Rules 20-21 & 40).
6-6-77	Filed Gov't's AFFIDAVIT of Jeremy G. Epstein in response to the Court's Memorandum opinion of 5-11-77.						G. Defendant Motion is allowed under advice of counsel up to 30 days is excludable per 3161(n)(1)(C).
6-20-77	Jury trial began and cont'd.						H. Miscellaneous Proceedings: Production of Records, Deposition, Extradition.
6-2-77	Trial cont'd.						I. Prosecution deferred by mutual agreement.
6-22-77	" "						M. Unavailability of defendant or essential witness.
6-23-77	" "						N. Period of confinement of defendant or defendant's stand trial.
6-27-77	" "						O. Period of NARA Commitment or Treatment.
6-28-77	" "						P. Superseding indictment and/or new charges.
6-29-77	" "						R. Defendant awaiting trial of co-defendant, defendant's services has been granted.
6-30-77	" " and concluded. Jury verdict GUILTY on Cts. 1 and 29. Bail is fixed at \$5,000 P.R.B. unsecured and to be co-signed by Mr. Graves, Sentencing adj'd until 7-27-77 at 9:30 AM, Carter, J.						T. Continuances Granted per 3161(n)(1)(E) ends of justice or complexity of case, or defendant's interests.
7-1-77	Filed Appearance Bond for the deft. in the sum of \$5,000.						U. Time between guilty plea and punishment.
7-21-77	Filed MEMO-ENDORSED on deft's counsel's letter to the Judge, dated 7-19-77. - Contents approved. CARTER, J.						W. Grand Jury in criminal case served per 3161(c).
7-27-77	Deft and atty present, Sentence adj'd to 9-7-77 at 10 A.M. Deft cont'd on bail at \$5,000 P.R.B. Deft waives speedy trial sentencing rules. CARTER, J.						
8-17-77	Filed transcript of record of proceedings, dated June 20-23, 1977						
8-17-77	Filed transcript of record of proceedings, dated June 27-30, July 1, 1977						
9-7-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the Atty Gen for impr. for a period of TWO (2) YEARS on each of counts 1 and 29 to run concurrently with each other. Bail pending appeal is fixed at a \$5,000 P.R.B. CARTER, J. (all copies issued).						
FINE AND RESTITUTION PAYMENTS							
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER		
9-29-77	Filed Notice of the 2nd supplemental record, being transmitted to the USCA.						

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-v-

INDICTMENT

77 Cr. 246

ISIAH CRUTCH,
LOUIS BAS, JR.,
LEONARD J. CARO,
EUGENE CRUTCH,
HEE SOO KIM, and
JOHN DOE, a/k/a "Eli Niccolo,"

Defendants.
-----X

FIRST COUNT

The Grand Jury charges:

1. From on or about the 1st day of January, 1975, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ISIAH CRUTCH, LOUIS BAS, JR., LEONARD J. CARO, EUGENE CRUTCH, HEE SOO KIM, and JOHN DOE, a/k/a "Eli Niccolo," the defendants, and Jerold Michael Heitzner, Suzan R. Abbott, Michael Zilberberg, and Lloyd Williams, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to commit offenses against the United States, to wit, violations of Sections 1343, 2312, and 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the defendants and their co-conspirators, having devised and intending to devise schemes and artifices to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing such schemes and artifices.

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3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did transport and cause to be transported in interstate and foreign commerce motor vehicles, knowing such motor vehicles to have been stolen and taken by fraud.

4. It was further a part of said conspiracy that the defendants and their co-conspirators would and did transport and cause to be transported in interstate and foreign commerce goods, wares, merchandise, securities, and money of a value in excess of \$5,000, knowing the same to have been stolen, converted, and taken by fraud.

5. It was further a part of said conspiracy that the defendants and their co-conspirators, with unlawful and fraudulent intent, would and did transport and cause to be transported in interstate and foreign commerce falsely made, forged, and counterfeited securities, knowing the same to have been falsely made, forged, and counterfeited.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. Between January 1, 1975 and November 1, 1975, ISLAN CRUTCH, the defendant, obtained quantities of counterfeit bank checks from LOUIS BAS, JR., the defendant, at 980 Winthrop Street, Brooklyn, New York.

2. On March 20, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to the Security National Rare Coin Company, San Antonio, Texas, during which she placed an order for approximately \$19,915 worth of gold coins on behalf of Lew Williams and Associates, 10 East 39th Street, New York, N.Y.

3. On March 21, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to

the Security National Rare Coin Company, San Antonio, Texas, during which she placed an additional order for approximately \$5,675 worth of gold coins.

4. On or about March 23, 1975, ISIAH CRUTCH, the defendant, sent by special delivery mail to the Security National Rare Coin Company, San Antonio, Texas, an envelope containing a counterfeit check drawn on the account of Lew Williams and Associates at the Marine Midland Bank in the amount of \$25,500.

5. On March 25, 1975, co-conspirator Jerold Michael Heitner received a shipment of approximately \$13,800 worth of gold coins from a messenger at John F. Kennedy Airport, Queens, New York.

6. On March 25, 1975, co-conspirator Jerold Michael Heitner handed a package containing approximately \$13,800 worth of gold coins to ISIAH CRUTCH, the defendant, in Queens, New York.

7. On March 26, 1975, co-conspirator Jerold Michael Heitner received a shipment of approximately \$6,790 worth of gold coins from a messenger at John F. Kennedy Airport, Queens, New York.

8. On March 26, 1975, co-conspirator Jerold Michael Heitner handed a package containing approximately \$6,790 worth of gold coins to ISIAH CRUTCH, the defendant, in Queens, New York.

9. On or about April 1, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Jerold Michael Heitner \$2,500.

10. On April 14, 1975, co-conspirator Susan R. Abbott, using the name "Elaine Goldstein", placed a telephone call from New York, New York to the Continental Coin Company, Minneapolis, Minnesota, during which she placed an order for approximately \$65,521.25 worth of gold coins on behalf of the Hilton Investment Corporation, Two Penn Plaza, New York, New York.

11. On May 1, 1975, ISIAH CRUTCH, the defendant, had a conversation with co-conspirator Jerold Michael Heitzner by telephone in New York, New York in which ISIAH CRUTCH directed Jerold Michael Heitzner to go to the office of Brinks, Incorporated, 27 William Street, New York, New York.

12. On May 1, 1975, co-conspirator Jerold Michael Heitzner, using the name "Mr. Young," executed an agreement with Brink's Incorporated on behalf of the Hilton Investment Corporation, at the office of Brink's Incorporated, 27 William Street, New York, New York.

13. On May 20, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Suzan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$12,500.

14. On May 20, 1975, co-conspirator Suzan R. Abbott, using the name "Elonda D'Auria", purchased a 1973 Mercedes Benz, vehicle identification number 116033-12-009217, from Leonard C. Yaseen, 2 Bay Avenue, Larchmont, New York, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$12,500.

15. On May 28, 1975, ISIAH CRUTCH, the defendant, and co-conspirator Suzan R. Abbott drove to Prestige Motors, Paramus, New Jersey.

16. On May 28, 1975, co-conspirator Suzan R. Abbott, using the name "Elonda D'Auria", sold a 1973 Mercedes Benz, vehicle identification number 116033-12-009217, to Prestige Motors, Paramus, New Jersey, for \$10,500.

17. On May 28, 1975, co-conspirator Suzan R. Abbott cashed a check for \$10,500 drawn on the account of Prestige Motors, Paramus, New Jersey, at the United Jersey Bank, Garden State Plaza, New Jersey.

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18. On May 23, 1975, co-conspirator Suzan R. Abbott handed \$10,500 to ISIAH CRUTCH, the defendant.

19. On May 31, 1975, co-conspirator Jerold Michael Heitzner placed a telephone call from New York, New York to Dionisio Ramon Arenas in Morristown, New Jersey.

20. On May 31, 1975, ISIAH CRUTCH, the defendant, handed to co-conspirator Jerold Michael Heitzner a counterfeit check drawn on the account of Raleigh L. Davenport at the Manufacturers Hanover Trust Company in the amount of \$1,395.00.

21. On May 31, 1975, co-conspirator Jerold Michael Heitzner traveled from New York, New York, to Morristown, New Jersey.

22. On May 31, 1975, co-conspirator Jerold Michael Heitzner, using the name "Raleigh Davenport", purchased a Hasselblad camera from Dionisio Ramon Arenas in Morristown, New Jersey with a counterfeit check drawn on the account of Raleigh L. Davenport at the Manufacturers Hanover Trust Company in the amount of \$1,395.00.

23. On May 31, 1975, Jerold Michael Heitzner gave a Hasselblad camera to ISIAH CRUTCH, the defendant, at 67 E. 11th Street, New York, New York.

24. On or about June 5, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Jerold Michael Heitzner \$300.

25. On or about June 15, 1975, co-conspirator Suzan R. Abbott placed a telephone call from New York, New York, to Samuel Higginbottom in Greenwich, Connecticut.

26. On June 16, 1975, ISIAH CRUTCH, the defendant, handed to co-conspirator Suzan R. Abbott a counterfeit check drawn on the account of the Barclay's Bank of New York in the amount of \$13,500.

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27. On June 16, 1975, co-conspirator Suzan R. Abbott, using the name "Katrina Walters," purchased a 1974 Mercedes Benz, vehicle identification number 10704412019066, from Samuel Higginbottom in Greenwich, Connecticut, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$13,500.

28. On or about June 23, 1975, ISIAH CRUTCH, the defendant, and co-conspirator Suzan R. Abbott drove to Rally Motors, Glen Cove, New York.

29. On or about June 23, 1975, co-conspirator Suzan R. Abbott attempted to sell a 1974 Mercedes Benz, vehicle identification number 10704412019066, to Rally Motors, Glen Cove, New York.

30. On or about June 25, 1975, co-conspirator Suzan R. Abbott sold a 1974 Mercedes Benz, vehicle identification number 10704412019066, to Benzel Busch Motor Car Corporation, 28 Grand Avenue, Englewood, New Jersey, for \$11,200.

31. On or about June 25, 1975, co-conspirator Suzan R. Abbott cashed a check for \$11,200 at a bank in Englewood, New Jersey.

32. On or about June 25, 1975, co-conspirator Suzan R. Abbott handed \$11,200 to ISIAH CRUTCH, the defendant.

33. On July 23, 1975, LEONARD J. CARO, the defendant, purchased a 1974 Mercedes Benz, vehicle identification number 10704412019518, from Robert Slobodien, 128 Passaic Avenue, Fairfield, New Jersey, with a counterfeit check drawn on the Bankers Trust Company in the amount of \$14,000.

34. On July 23, 1975, LEONARD J. CARO, the defendant, drove a 1974 Mercedes Benz, vehicle identification number 10704412019518, from 128 Passaic Avenue, Fairfield, New Jersey, to 12 E. 13th Street, New York, New York.

35. On July 24, 1975, ISIAH CRUTCH, the defendant, instructed co-conspirator Susan R. Abbott to take a 1974 Mercedes Benz, vehicle identification number 10704412019513, to E.G. Schane, Inc., 210 W. 70th Street, New York, New York.

36. On July 24, 1975, co-conspirator Susan R. Abbott, using the name "Shailla Slobodien," attempted to sell a 1974 Mercedes Benz, vehicle identification number 10704412019513, to E.G. Schane, Inc., 210 W. 76th Street, New York, New York.

37. In or about July, 1975, ISIAH CRUTCH, the defendant, met co-conspirator Michael Zilberberg at 315 W. 57th Street, New York, N.Y.

38. In or about August, 1975, ISIAH CRUTCH gave to co-conspirator Michael Zilberberg one hundred counterfeit Bankers Trust Company official checks, having an aggregate face value of \$1,750,000.

39. On or about July 8, 1975, ISIAH CRUTCH, the defendant, gave to co-conspirator Jerold Michael Heitzner two counterfeit checks, a check drawn on the Barclay's Bank of New York in the amount of \$14,607.13 and a check drawn on the Peoples Trust of New Jersey in the amount of \$12,550.

40. On July 8, 1975, HEE SOO KIM, the defendant, and co-conspirator Jerold Michael Heitzner traveled from New York, New York to Park Ridge, Illinois.

41. On July 8, 1975, co-conspirator Jerold Michael Heitzner opened an account at the Citizens Bank & Trust Company, Park Ridge, Illinois, in the name "Bernard Kantor."

42. On July 8, 1975, co-conspirator Jerold Michael Heitzner deposited in an account opened at the Citizens Bank and Trust Company, Park Ridge, Illinois, a counterfeit check drawn on the People's Trust of New Jersey in the amount of \$12,550.

43. On July 8, 1975, HEE SOO KIM, the defendant, opened an account at the Citizens Bank and Trust Company in the name "Bette A. Lang."

44. On July 8, 1975, HEE SOO KIM, the defendant, deposited in an account opened at the Citizens Bank and Trust Company, Park Ridge, Illinois, a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$14,607.13.

45. On or about August 29, 1975, ISIAH CRUTCH, the defendant, directed co-conspirator Suzan R. Abbott to place a telephone call to the Polaroid Corporation, Paramus, New Jersey.

46. On or about August 29, 1975, co-conspirator Suzan R. Abbott placed a telephone call from New York, New York to the Polaroid Corporation in Paramus, New Jersey during which she placed an order for 250 Polaroid SX-70 cameras at a total cost of \$33,000 on behalf of the International Monetary Exchange.

47. On or about September 4, 1975, co-conspirator Suzan R. Abbott placed a telephone call to Broser Bros., Inc., a moving company.

48. On September 4, 1975, ISIAH CRUTCH, the defendant, gave to co-conspirator Suzan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$33,000.

49. On September 4, 1975, co-conspirator Suzan R. Abbott delivered a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$33,000 to an employee of Broser Bros., Inc.

50. On September 4, 1975, co-conspirator Jerold Michael Heitzner followed a Broser Bros., Inc. moving van from New York, New York to the Polaroid Corporation, Paramus, New Jersey.

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51. On September 4, 1975, co-conspirator Jerold Michael Heitzner followed a Broses Bros., Inc., moving van from the Polaroid Corporation, Paramus, New Jersey, to 1160 Fifth Avenue, New York, New York.

52. On September 4, 1975, LEONARD J. CARO, the defendant, and co-conspirator Jerold Michael Heitzner supervised the unloading of 250 Polaroid SX-70 cameras from a Broses Bros., Inc. moving van to a storage room at 1160 Fifth Avenue.

53. On September 8, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to the Polaroid Corporation in Paramus, New Jersey, during which she placed an order for 150 Polaroid SX-70 cameras at a total cost of \$19,800 on behalf of the International Monetary Exchange.

54. On September 9, 1975, ISIAH CRUTCH, the defendant, gave to co-conspirator Susan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$19,800.

55. On September 9, 1975, co-conspirator Susan R. Abbott delivered a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$19,800 to an employee of Broses Bros., Inc.

56. On September 15, 1975, ISIAH CRUTCH, the defendant, gave LEONARD J. CARO, the defendant, a check drawn on the Barclay's Bank of New York in the amount of \$7,288.

57. On September 15, 1975, ISIAH CRUTCH and LEONARD J. CARO, the defendants, drove to a Western Union office at 100 Nicholas Court, Hempstead, New York.

58. On September 15, 1975, LEONARD J. CARO, the defendant, using the name "Paul Lyons," presented a check drawn on the Barclay's Bank of New York in the amount of \$7,288 to an employee of the Western Union office at

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100 Nicholas Court, Hempstead, New York and attempted there-
with to send \$7,283 by wire to Philadelphia, Pennsylvania.

59. On or about September 1, 1975, HEE SOO KIM, the defendant, using the name "Eva Kai," placed a telephone call from New York, New York to Milton Eusonik in Ontario, Canada, during which she agreed to purchase a 1974 Rolls Royce, serial number CRB 16235, for \$45,150.

60. On September 5, 1975, co-conspirator Suzan R. Abbott, using the name "Eva Kai," spoke by telephone to Patrick G. Rio, an employee of the Surrey Limousine Service.

61. On September 6, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Suzan R. Abbott two counterfeit Bankers Trust Company cashier's checks, one in the amount of \$45,150 payable to Milton Eusonik, and the other in the amount of \$1,292 payable to United States Customs.

62. On September 6, 1975, co-conspirator Suzan R. Abbott sent by messenger service to Patrick G. Rio an envelope containing two counterfeit Bankers Trust Company cashier's checks, one in the amount of \$45,150, and the other in the amount of \$1,292.

63. On September 6, 1975, Patrick G. Rio traveled from New York, New York to the home of Milton Eusonik, 257 Burbank Road, Willowdale, Ontario, Canada.

64. On September 6, 1975, Patrick G. Rio handed Milton Eusonik a counterfeit Bankers Trust Company cashier's check in the amount of \$45,150.

65. On September 6, 1975, Patrick G. Rio drove a 1974 Rolls Royce, serial number CRB 16235, from 257 Burbank Road, Willowdale, Ontario, Canada, to a garage located at 57th Street and Second Avenue, New York, New York.

66. On September 7, 1975, Patrick G. Rio handed an envelope to the building superintendant at 1160 Fifth Avenue, New York, New York.

67. On or about September 7, 1975, ISLAN CRITCH, the defendant, spoke by telephone to co-conspirator Jerold Michael Heitzner and instructed him to pick up an envelope at 1160 Fifth Avenue, New York, New York.

68. On or about September 8, 1975, co-conspirator Jerold Michael Heitzner picked up an envelope at 1160 Fifth Avenue, New York, New York.

69. On or about September 8, 1975, Jerold Michael Heitzner drove a 1974 Rolls Royce, serial number CRB 16235, from a garage located at 57th Street and Second Avenue, New York, New York, to a garage at 60th Street and Fifth Avenue, New York, New York.

70. On November 18, 1975, JOHN DOE, a/k/a "El Niocolo," the defendant, visited Michael Kalinian at 500 E. 83rd Street, New York, New York.

71. On November 19, 1975, co-conspirator Suzan R. Abbott gave JOHN DOE, a/k/a "El Niocolo," the defendant, a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$7,900.

72. On November 19, 1975, JOHN DOE, a/k/a "El Niocolo," the defendant, purchased from Michael Kalinian a 1975 Cadillac, vehicle identification number 6L67SQ423927, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$7,900.

73. On December 11, 1975, co-conspirator Suzan R. Abbott, using the name "Elaine Dudley," telephoned the Regency Chauffeur Service, 1414 Metropolitan Avenue, New York, New York and requested the services of a chauffeur.

74. On December 15, 1975, John McClafferty, an employee of the Regency Chauffeur Service, went to a garage located at 300 E. 55th Street, New York, New York.

75. On December 15, 1975, John McClafferty drove a 1975 Cadillac, vehicle identification number 6L67SQ423927, from 300 E. 56th Street, New York, New York to Baltimore, Maryland.

76. On December 16, 1975, co-conspirator Susan R. Abbott spoke by telephone from New York, New York to John McClafferty in Baltimore, Maryland.

77. On December 24, 1975, EUGENE CRUTCH, the defendant, handed co-conspirator Lloyd Williams an envelope containing a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$9,850.

78. On December 24, 1975, co-conspirator Lloyd Williams purchased a 1975 Lincoln Mark IV, vehicle identification number 5Y39A860049, from Daniel E. Henderson, 3657 Broadway, New York, New York, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$9,850.

79. On December 31, 1975, EUGENE CRUTCH, the defendant, and co-conspirator Lloyd Williams drove in a 1975 Lincoln Mark IV, vehicle identification number 5Y39A860049, from New York, New York to Newark, New Jersey.

(Title 18, United States Code, Section 371.)

SECOND and THIRD COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly having devised and intending to devise a scheme and artifice to defraud and for obtaining the property of the Security National Rare Coin Company, San Antonio, Texas, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Texas, signals and sounds for the purpose of executing such scheme and artifice:

COUNT

DATE

2

March 20, 1975

3

March 21, 1975

(Title 18, United States Code, Sections 1343 and 2)

FOURTH COUNT

The Grand Jury further charges:

On or about the 24th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Texas, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Marine Midland Bank, New York, New York, in the amount of \$25,590.00, payable to the Security National Rare Coin Corporation, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

FIFTH COUNT

The Grand Jury further charges:

On or about the 25th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from Texas to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, gold coins having an approximate value of \$12,800, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

SIXTH COUNT

The Grand Jury further charges:

On or about the 26th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from Texas to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, gold coins having an approximate value of \$6,790, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 14th day of April, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of the Continental Coin Company, Minneapolis, Minnesota, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Minnesota, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

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EIGHTH COUNT

The Grand Jury further charges:

On or about the 24th day of April, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Minnesota, a falsely made, forged, and counterfeited security, to wit, a check drawn on the First National Bank of Chicago, Chicago, Illinois, in the amount of \$65,521.25 payable to the Continental Galleries, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

NINTH COUNT

The Grand Jury further charges:

On or about the 28th day of May, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1973 Mercedes Benz, vehicle identification number 1160JJ-12-009217, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TENTH COUNT

The Grand Jury further charges:

On or about the 31st day of May, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Dionisio Ramon Arenas, Morristown, New Jersey, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be

transmitted by means of wire and radio communication in interstate commerce, from New York to New Jersey, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

ELEVENTH COUNT

The Grand Jury further charges:

On or about the 31st day of May, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS EAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Manufacturers Hanover Trust Company, New York, New York, in the amount of \$1,395.00, payable to Ramon Arenas, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWELFTH COUNT

The Grand Jury further charges:

On or about the 15th day of June, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS EAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Samuel Higginbottom, Greenwich, Connecticut, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Connecticut, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

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19a
THIRTEENTH COUNT

The Grand Jury further charges:

On or about the 16th day of June, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Connecticut, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Barclay's Bank of New York, New York, New York, in the amount of \$13,500, payable to Samuel Logan Higginbottom, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about the 25th day of June, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1974 Mercedes Benz, vehicle identification number 10704412019066, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

FIFTEENTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LEONARD J. CARO, and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, a falsely made, forged, and counterfeited security, to wit, a check drawn on the

Bankers Trust Company, New York, New York, in the amount of \$14,000, payable to Apollo Distributing Company, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LEONARD J. CARO, and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New Jersey to New York, a motor vehicle, to wit, a 1974 Mercedes Benz, vehicle identification number 10704412019519, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about August, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Washington, D. C., falsely made, forged, and counterfeited securities, to wit, one hundred checks drawn on the Bankers Trust Company, New York, New York, having an aggregate face value of \$1,750,000, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

EIGHTEENTH COUNT

The Grand Jury further charges:

On or about the 8th day of July, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New

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York to Illinois, a falsely made, forged, and counterfeited security, to wit, a check drawn on the People's Trust of New Jersey, Paramus, New Jersey, in the amount of \$12,550, payable to Bernard Kantor, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

NINETEENTH COUNT

The Grand Jury further charges:

On or about the 8th day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LOUIS BAS, JR., and HEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Illinois, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Barclay's Bank of New York, New York, New York, in the amount of \$14,607.13, payable to Bette A. Lang, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWENTIETH and TWENTY-FIRST COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of the Polaroid Corporation, Paramus, New Jersey, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to New Jersey, signals and sounds for the purpose of executing such scheme and artifice:

COUNT

DATE

20

August 29, 1975

21

September 3, 1975

(Title 18, United States Code, Sections 1343 and 2.)

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TWENTY-SECOND and TWENTY-THIRD COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, falsely made, forged, and counterfeited securities, to wit, checks drawn on the Barclay's Bank of New York, New York, New York, in the amounts hereinafter set forth, payable to the Polaroid Corporation, knowing the same to be falsely made, forged, and counterfeited:

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF CHECK</u>
22	September 4, 1975	\$33,000
23	September 9, 1975	\$19,800

(Title 18, United States Code, Sections 2314 and 2.)

TWENTY-FOURTH COUNT

The Grand Jury further charges:

On or about the 4th day of September, 1975, in the Southern District of New York, ISIAH CRUTCH, LEONARD J. CARO, and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New Jersey to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, two hundred and fifty (250) Polaroid SX-70 cameras having an approximate value of \$33,000, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

23a

TWENTY-FIFTH COUNT

The Grand Jury further charges:

On or about the 1st day of September, 1975, in the Southern District of New York, ISIAH CRUTCH, LOUIS BAS, JR., and HEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Milton Rusonik, Ontario, Canada, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, from New York to Ontario, Canada, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

TWENTY-SIXTH COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce, from New York to Ontario, Canada, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Bankers Trust Company, New York, New York, in the amount of \$45,150, payable to Milton Rusonik, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWENTY-SEVENTH COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1975, in the Southern District of New York, ISIAH CRUTCH, LOUIS BAS, JR. and HEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly did transport and cause to be

transported in interstate and foreign commerce, from Ontario, Canada to New York, a motor vehicle, to wit, a 1974 Rolls Royce, serial number CRB 16235, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TWENTY-EIGHTH COUNT

The Grand Jury further charges:

On or about the 15th day of December, 1975, in the Southern District of New York, ISLAH CRUTCH, LOUIS BAS, JR., and JOHN DOE, a/k/a "El Niño," the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to Maryland, a motor vehicle, to wit, a 1975 Cadillac, vehicle identification number 6L678Q423927, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TWENTY-NINTH COUNT

The Grand Jury further charges:

On or about the 31st day of December, 1975, in the Southern District of New York, ISLAH CRUTCH, LOUIS BAS, JR., and EUGENE CRUTCH, the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1975 Lincoln Mark IV, vehicle identification number 5Y39A360049, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

Is it correct?
Yes.

FORWARD

ROBERT D. FISKE, JR.
United States Attorney

TOBER CHARTER'S CHARGE

75a

USA vs LOUISE BROTON

Ladies and Gentlemen:

571 CR 246

We now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to exercise your final role which is to pass upon and to decide the fact issues that are in the case. You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions, and to apply it to the facts as you find them. The logical result of that application is the verdict in the case.

I have permitted each of you to take notes during the course of this trial. I expect you to use whatever notes you took merely as memory aids. They should not be allowed to take precedence over your independent memory of the facts. Moreover, merely because a fellow juror may have memorialized in his or her notes something contrary to your recollection, is not to be taken by you to mean that your memory is in error. It is your own recollection of the facts, and yours alone, which is controlling.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the government or the defense may have said with respect to matters in evidence during the trial, in a question, in colloquy with the court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses, and such exhibits as were received in evidence and any stipulation entered into among counsel.

At times throughout this trial I have been called upon to make rulings upon various matters of law, as for example when a question put to a witness was objected to, or after a question was answered a motion was made to strike the answer, or the offer of a document was objected to.

I have sustained some objections and I have overruled others. I have received and rejected exhibits that were offered. It is essential in the performance of your duty that when anything was ordered stricken from the record or rejected you put it out of your mind and disregard it entirely. Similarly, if a question was asked and an objection to that question was sustained and no answer was given, the question itself should play no part in your consideration of the case. Please do not concern yourselves at all with my reasons for any of these rulings. These are purely legal matters, and of no concern to you.

Conferences at the bench were conducted at the request of the attorneys. As I have advised you, these conferences were solely on questions of law and are of no concern to you. You are not to draw any inferences against either side because of requests for such conferences or because such requests were denied.

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It is your function to determine the truth or falsity of the testimony of each witness. No inference as to the credibility of any witness should be drawn from the fact that upon occasion I have asked questions of a witness. My questions were only intended for clarification or to expedite matters. They were not intended to suggest any opinion as to the credibility of a witness who appeared before you.

Now how do you determine the truth and how do you appraise the credibility of the witness? Well, simply put, you use your own plain, every day common sense.

The degree of credit to be given a witness should be determined by his or her demeanor here, his or her relationship to the controversy and to the parties, his or her bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in light of all other testimony and the attendant circumstances in the case.

You observed the witnesses. You heard their testimony. How did they strike you? Did their answers seem frank, open, truthful, candid? Or were they equivocal, deliberately confusing, or evasive? Or were they somewhere in between? How did each witness impress

you? So you take each one, and on the basis of your common sense and your everyday experience you determine whether or not you believe the witnesses and to what extent you believe them.

In passing upon the credibility of a witness, you may also take into account whether there were material inconsistencies or contradictions within his or her own testimony; whether a witness changed his or her testimony; the extent to which he or she has been corroborated or contradicted by other credible evidence.

An interested witness is not necessarily unworthy of belief. The interest of a witness in the outcome of this lawsuit is a factor, however, which you may consider in determining the weight and credibility to be given to that witness' testimony.

If you find that any witness has wilfully testified falsely to any material fact, you may disregard all of his testimony or accept such part of it as you believe worthy of belief as it appeals to your reason or judgment.

The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood, or because the witness did not accurately observe the events about which he testified, or because his recollection of what happened is at fault, or even because he has not expressed himself clearly in giving his testimony.

You are entitled to consider the possibility that where a witness is called upon to testify some time after the event, inconsistencies may result from an innocent mistake or lapse of memory rather than from a deliberate attempt to falsify or change facts. It is not unusual for a witness in a proceeding to utter inconsistencies at some stage,

— You may accept so much of
the testimony of a witness as you may deem true, and
disregard the rest. You are at liberty, if you deem
it appropriate, to disbelieve testimony in whole or
in part, even though it is not otherwise contradicted
or impeached.

The fact that the government is a party here -- that the prosecution is brought in the name of the United States of America -- entitles it to no greater consideration than that accorded to any other party to the litigation.

In this connection, it should be remembered that the testimony of agents of the government are not to be entitled to any greater or lesser weight than any witness who is not an agent of the government. All parties, government and individuals alike, stand equal before this court of justice.

Certain of the witnesses called in this case have been identified to you as expert witnesses. These have been John Wills and Burwell Driver, who testified with regard to the fingerprints on checks purportedly seized by the government. Each of these men is qualified to render expert opinions relative to his area of expertise.

The law permits such an expert witness to testify in the form of an opinion, and the opinions stated by these experts are based on particular facts as the expert himself has observed them or as the attorney who questioned him has asked him to assume.

However, the expert is subject to the same rules of credibility as any other witness. You may reject his opinion if you find the facts different than he assumed or if you find his testimony unconvincing, and you may accept or reject the testimony as you would the testimony of any other witness. The opinions of the experts must be considered by you, but are not controlling in reaching a judgment. In short, you may give the expert testimony such weight as you feel it deserves. The determination in this case rests with you, ^{Not} ~~not~~ with the experts.

In deciding this case you will be called upon to consider both direct evidence and circumstantial evidence. I would like to explain the difference between these two types of evidence.

Direct evidence is where a witness or a participant testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. A document can also contain direct evidence.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably flow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is evidence of facts from which other facts that are material in the lawsuit may be found by a process of inference.

Let me give you an example that I believe has nothing to do with the facts in this case.

Suppose you had a material issue in some case as to whether John Doe was drinking alcoholic beverages on some particular night. A witness might take the stand and testify that he had given whiskey to John Doe and had seen him drinking it. That would be what is termed direct evidence. If you believed the witness and thought he was able to report accurately, you could find from that direct evidence that John Doe had been drinking on the night in question.

On the other hand, you might have a witness testify that he had seen John Doe enter a tavern and then had seen him leave the tavern a few hours later, walking and talking in ways that suggested he was drunk. If you believed that witness and thought he was an accurate reporter you could find on the basis of that testimony that John Doe had been drinking on the night in question. You would be using circumstantial evidence to find the existence of a material fact in that hypothetical case.

Let me tell you for your purposes that there is no general rule of law and no general rule of good sense that places either of these two types of evidence, direct or circumstantial, in a general way on any higher or lower or different footing from the other. With respect to any evidence admitted into a trial record, whether it is direct or circumstantial, it is entitled to such weight, and you are permitted to draw such reasonable inferences, as your good judgment dictates in a particular case.

The weight and effect of any item or category of evidence depend not on whether it is to be categorized as direct or circumstantial but on the concrete significance of that particular piece of evidence in its trial setting and upon its intrinsic credibility and persuasive power in the light of your observations of the witness, your own general experience of things and your reasonable analysis of the whole record.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defendants ask you to draw another. It is for you to decide, and for you alone, what inferences you will draw.

During the course of the trial several tape recordings were admitted into evidence as well as several transcripts which purported to reflect the conversations on the recordings. I instruct you that the transcripts are to be considered by you solely as aids in your comprehension of the tape recordings. They are not independent evidence of the conversations. In your understanding of the taped conversations you are to be guided by what you heard on the tapes, not by what you read in the transcripts.

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As I advised you at the start of this trial, the indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt and no inference of any kind may be drawn from the indictment.

The government has the burden of proving the charges against each defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the government throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment.

The presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

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Now, what is a reasonable doubt? It is a doubt based on reason, which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man or woman might entertain. It is not a fanciful or speculative doubt; it is not an imagined doubt, it is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not proof to an absolute certainty. Let me repeat--it is a reasonable doubt. It is a doubt that appeals to your reason, to your judgment, your common understanding and your common sense--a doubt that would cause you to hesitate to act in matters of importance in your daily lives. On the other hand, the Government does not have to prove the guilt of a defendant beyond all possible doubt or to a positive certainty. If that were the rule, few people, however guilty they might be, would be convicted. If, when you consider the evidence in this case, you have a reasonable doubt that the Government has proved any element of the crime charged, then you must return a verdict of acquittal. You may not return a guilty verdict simply because you feel that it is more likely than not that a defendant committed the crime charged. A guilty verdict is only appropriate if each and every one of you is satisfied that a defendant's guilt has been proved beyond a reasonable doubt.

47 a

Admissions of a defendant are among the most effectual proofs in the law and constitute the strongest evidence against the party making it that can be given of the facts stated in the admission. Accordingly, you are entitled to give great weight to the defendants' admissions in this case. But, as with all the evidence, it is for you to determine what weight to give to the admissions.

The government has called as witnesses Suzan Abott, Jerold Heitzner, Lloyd Williams and Leonard Caro, who, if their testimony is to be accepted, were accomplices in the crimes charged against the defendants in this case. The government has also called Steven Rowe, an individual commonly known as an informer or informant.

In the prosecution of crime, the government is frequently called upon to use witnesses who are accomplices or informers. Often it has no choice. The government must rely upon witnesses or transactions, such as they are. The law permits the use of informers, provided the rights of the defendants are not violated and, therefore, whether or not you approve of the use of informers should not enter into your deliberations.

The fact that Abott, Heitzner and Williams have admitted their participation to the crimes charged here, the fact that Caro has pleaded guilty to a serious crime, and the fact that Rowe has been convicted of a serious crime, especially crimes bearing on their veracity, may be considered by you as bearing on their credibility as witnesses in this case. Their testimony should be viewed with caution and scrutinized with care. Was any of their testimony a fabrication inspired by any motive of reward, of self-interest or hostility to the defendants? Were they induced to give false or colored testimony against the defendants by a promise or a hope or an expectation of favorable consideration by the government in connection with these or other matter? If you find that this was so, you ought unhesitatingly to reject it.

There is no requirement in the federal courts that the testimony of an accomplice be corroborated. The government contends that the testimony of the accomplices here is corroborated by other evidence with respect to several key portions of their testimony. However, even without such corroboration, conviction may rest upon the testimony of an accomplice, if you believe it and find it credible. It does not follow that because a person has acknowledged participation in the crimes charged against the defendants that he is incapable of giving a true version of what he testified to in the case on trial.

After a cautious and careful examination of the testimony of an accomplice or an informer and his demeanor upon the witness stand, if you are satisfied that he told the truth here as to certain events, there is no reason why you should not accept it as credible and act upon it accordingly.

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The indictment in this case contains 29 counts. Each of these counts charges a separate offense or crime. It is your obligation to consider separately each of the individual charges, or counts, of the indictment, and to decide whether, as to each count, the government has or has not sustained its burden of proving beyond a reasonable doubt the guilt of each defendant of the charges in that particular count.

The indictment names six defendants. Only four of these defendants are on trial before you. They are: Isiah Crutch, Louis Bas, Jr., Eugene Crutch and Elie Nicoleau. These are the only persons whose guilt or innocence you must announce in your verdict.

Defendants Isiah Crutch and Louis Bas are charged in all of the counts of the indictment. Elie Nicoleau is charged in only Counts 1 and 28; and Eugene Crutch is charged in only Counts 1 and 29.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of the defendants on trial before you must be determined separately with respect to them, solely on the evidence presented, or the lack of evidence. In other words, the case against each defendant stands or falls upon the proof or lack of proof of the charges against him, and not against someone else, although, as I will explain to you shortly, in considering a particular defendant's guilt or innocence, you may have to determine the nature of the participation, if any, of the other named defendants.

One of the co-conspirators named in the indictment -- Leonard Caro -- and some co-conspirators not named in the indictment -- Jerold Heitzner, Suzan Abott and Lloyd Williams -- are not on trial here. Caro has pleaded guilty in this case. Heitzner, Abott and Williams have admitted their participation in the crimes. Caro's plea and the admissions of Heitzner, Abott and Williams are personal statements of guilt. They are not an indication that the other defendants on trial are guilty, and you are not to consider these statements as evidence against them.

Let me now turn to the indictment in this case. The indictment charges in 29 counts that the defendants or various of the defendants, violated federal laws with respect to wire fraud; interstate transportation of stolen property; interstate transportation of stolen motor vehicles; and interstate transportation of forged and counterfeited securities. The first count charges the four defendants before you and six others with conspiracy to violate these laws. I will refer to the first count as the conspiracy count.

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Counts 2 through 29 charge the defendants, or various of the defendants, with substantive or actual violations of the federal laws. Counts 2, 3, 7, 10, 12, 20, 21, and 25 charge defendants Isiah Crutch and Louis Bas with wire fraud.

Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26 charge defendants Isiah Crutch and Louis Bas with the transportation of forged and counterfeited securities in interstate commerce.

Counts 5, 6, and 24 charge Isiah Crutch and Louis Bas with the transportation of stolen property worth \$5,000 or more in interstate commerce.

Counts 9, 14, 16, 27, 28, and 29 charge defendants Isiah Crutch and Louis Bas with the interstate transportation of stolen motor vehicles. Elie Nicoleau, in Count 28, and Eugene Crutch, in Count 29, are also charged with this offense.

Let me further explain the difference between the conspiracy count and the substantive counts.

The charge in Count 1, the conspiracy count, relates to violations of various federal laws. These laws are set out in Title 18 of the United States Code.

Section 1343 of Title 18 provides, in pertinent part:

49 a

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire [or] radio . . . communication in interstate or foreign commerce, any writings, signs, signals . . . or sounds for the purpose of executing such scheme or artifice [is guilty of a crime]."

Section 2314 of Title 18 provides, in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged . . . or counterfeited securities, knowing the same to have been falsely made, forged . . . or counterfeited [is guilty of a crime]."

This section further provides, in pertinent part:

"Whoever transports in interstate commerce any goods, wares, [or] merchandise . . . of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud . . . [is guilty of a crime]."

Section 2312 of Title 18 provides, in pertinent part:

"Whoever transports in interstate . . . commerce a motor vehicle . . . knowing the same to have been stolen . . . [is guilty of a crime]."

Let me now read Count 1, which is the conspiracy count, except⁶⁷ the alleged overt acts.
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[READ Count 1 of the Indictment except the Overt Acts]

Section 371 of Title 18 of the United States Code provides, in pertinent part

"If two or more persons conspire. . . to commit any offense against the United States. . . and one or more of such persons do any act to effect the object of the conspiracy, [each is guilty of a crime]."

In order to find any one of the defendants guilty of a conspiracy, as charged in Count 1, you must be satisfied that the government has proved the following elements beyond a reasonable doubt.

First, you must find the existence of the conspiracy charged in Count 1. In this regard, you must find that sometime between January 1, 1975, and the date of filing this indictment, April 19, 1977, an agreement existed between all of the alleged co-conspirators named in the indictment, or between any two of them, to accomplish at least one of the following objects: (1) to cause to be transmitted by wire and radio communication in interstate commerce messages in furtherance of a scheme or schemes to defraud; (2) to transport and cause to be transported in interstate commerce stolen motor vehicles; (3) to transport or cause to be transported in interstate commerce stolen and fraudulently obtained goods and merchandise of a value in excess of \$5,000; or (4) to transport and cause to be transported in interstate commerce forged and counterfeited checks.

In this regard, you need not find that the conspiracy existed for the entire time mentioned in the indictment or that the agreement was to accomplish all the objectives listed in the indictment. It is sufficient if it is shown that the agreement existed for any part of the time alleged and that at least one of the overt acts was committed in furtherance thereof during the period.

Also, as I shall explain in further detail later, you need not find that all persons mentioned reached an agreement. An agreement between two defendants or between any one defendant and another alleged co-conspirator is sufficient.

Second, that while the conspiracy was still in existence, the defendant whose guilt or innocence you are considering knowingly and wilfully associated himself with the conspiracy with knowledge of its alleged criminal purpose.

Third, that while the conspiracy was still in existence, at least one of the alleged conspirators, not necessarily the defendant you are considering, knowingly

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2 committed at least one of the overt acts set forth in the
3 indictment at or about the time and place alleged; and that such
4 act was committed in furtherance of the conspiracy.

5 If the government fails to establish each of these
6 three elements as to any of the defendants, beyond a reason-
7 able doubt, you must acquit those defendants as to whom the
8 government has failed to establish any element of this count.
9 If the government succeeds in satisfying this burden as to a
10 particular defendant, your duty is to convict that defendant
11 on this count.

12 Now let me elaborate more fully on each of the:
13 elements of Count One. As I have informed you, the first of
14 the elements which you must find that the government has
15 proved beyond a reasonable doubt is that the conspiracy charged
16 in the indictment existed. First, I want to discuss with you
17 what the term "conspiracy" means, because that term is here used
18 in a legal context and therefore has a somewhat different
19 meaning than it has when it is used colloquially.

20 What is a conspiracy? A conspiracy is a combina-
21 tion or agreement, of two or more persons, to accomplish a
22 criminal or unlawful purpose. The gist of the crime of
23 conspiracy is the unlawful combination or agreement to violate
24 the law. Whether or not the conspirators finally accomplished
25 what is alleged they conspired to do, is immaterial. That is

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2 to say, the government is not obliged to prove that a purpose
3 of the conspirators was attained.

4 A conspiracy to commit a crime is an entirely
5 separate and distinct offense from the substantive crime which
6 is the object of the conspiracy. In order to find a defen-
7 dant guilty of conspiracy, there is no need to prove that the
8 substantive crime which is the object of the conspiracy has
9 been committed. The essence of the crime of conspiracy is an
10 agreement or understanding to violate other laws. Thus, it is
11 a criminal offense if two or more persons conspire to commit
12 any offense against the United States, and one or more of such
13 persons: does any act to effect the object of the conspiracy.

14 It has often been said that a conspiracy is a
15 partnership in crime in which each member becomes the agent
16 of every other member. To establish a conspiracy, however, the
17 government is not required to show that the alleged conspira-
18 tors sat around a table and entered into a solemn compact,
19 orally or in writing, stating that they have formed a
20 conspiracy to violate the law and setting forth details of the
21 plans. It is sufficient if two or more persons, in any manner
22 through any contrivance, impliedly or tacitly, come to a
23 common understanding to violate the law. Express language
24 or specific words are not required to indicate assent or
25 attachment to a conspiracy. On the other hand, mere

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2 similarity of conduct among various persons, and the fact that
3 they may have assembled together and discussed common aims and
4 interests, does not necessarily establish proof of the exis-
5 tence of a conspiracy.

6 If, upon consideration of all the evidence, direct
7 and circumstantial, testimonial and documentary, you find beyond
8 a reasonable doubt that the minds of at least two of the
9 alleged conspirators met in an understanding way and that they
10 agreed, as I have explained a conspiratorial agreement to
11 you, to work together in furtherance of the unlawful scheme
12 alleged in the indictment, then proof of the existence of the
13 conspiracy is satisfied.

14 If you find that a conspiracy existed beyond a
15 reasonable doubt, then you must consider the second element of
16 the conspiracy count; that is, whether the government has
17 established beyond a reasonable doubt that the defendant whose
18 guilt or innocence you are considering knowingly and wilfully
19 became a participant in the conspiracy with knowledge of its
20 alleged criminal purpose, and in furtherance of its unlawful
21 objectives.

22 You may not assume that a defendant joined a
23 conspiracy simply because you are convinced that he knew or
24 was associated or he had other dealings with people who
25 conspired to violate the law.

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2 I charge you that mere association, even close or
3 repeated association, with some other alleged member of the
4 conspiracy is not sufficient, in and of itself, to support a
5 finding that a defendant was a member of the alleged conspiracy.

6 In addition, I instruct you that none of the
7 following is sufficient, in and of itself, to support a finding
8 that a defendant was a member of the alleged conspiracy:
9 mere attendance at a meeting with co-conspirators; or mere
10 presence at the scene of the crime; or mere knowledge of
11 conspiratorial acts or objectives, or mere unwitting partici-
12 pation.

13 The mere fact that two persons or more persons are
14 on trial together cannot be considered in any way as indicating
15 that the participated in a conspiracy to violate the law.

16 All of the conspirators need not be acquainted
17 with each other. They may not have previously associated
18 together. One of the defendants may know only one other
19 member of the conspiracy, but if he enters into an unlawful
20 agreement with that other member of the conspiracy, he becomes
21 a party thereto.

22 To conclude that a defendant was a member of a
23 conspiracy, you must find that he knew the unlawful purpose of
24 the alleged conspiracy, that knowing the purpose he intentionally
25 joined in the endeavor, and that he had an interest, in making

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2 it succeed. It is not necessary, however, that you find that
3 each conspirator was fully informed as to the details or the
4 full scope of the conspiracy, or participated in every aspect
5 of the conspiracy. Similarly, you need not find that all of
6 the alleged co-conspirators knew each other. A person becomes
7 a member of a conspiracy by associating himself with a common
8 plan or scheme, knowing the central aim or principal purpose of
9 that common plan or scheme and intending to help bring about
10 its success.

11 To repeat, in order to find a defendant guilty on
12 the conspiracy count, you must find beyond a reasonable doubt
13 that the defendant acted knowingly and wilfully. Specifically,
14 you must find that the defendant knowingly and wilfully became
15 a participant in the conspiracy with knowledge of its unlawful
16 purpose and intending to help bring about its success.

17 Knowledge, wilfulness and intent exist in the mind.
18 Since it is not possible to look into a man's mind to see what
19 went on, the only way you have of arriving at a decision on these
20 questions is for you to take into consideration all the facts
21 and circumstances shown by the evidence, including the
22 exhibits, and to determine from all such facts and circumstances
23 whether the requisite knowledge, wilfulness and intent were
24 present at the time in question.

25 An act is done knowingly if it is done voluntarily

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2 and purposefully and not because of mistake, inadvertence or
3 other innocent reason.

4 An act is wilful if it is done knowingly,
5 deliberately and with an evil purpose. An act is not done
6 wilfully if it is done as a result of a mistake, carelessness,
7 lack of an evil purpose, or for some other innocent reason.

8 It is not necessary for you to find that a defen-
9 dant knew he was breaking a particular law and whether or not
10 an act is knowing or wilful has nothing to do with the
11 defendant's personal or private reasons for committing the
12 act, so long as the act is done with an evil purpose.

13 The government has contended that various of the
14 defendants attempted to conceal their activities, for example,
15 through the use of a fictitious name or false docu-
16 ments. Such evidence, if you find it credible, may be
17 considered by you in determining the issue of knowledge,
18 wilfulness and intent.

19 Once you have found the conspiracy to exist and
20 a particular defendant to have knowingly and wilfully partici-
21 pated in it with knowledge of its unlawful purpose, the extent
22 of his participation has no bearing on his guilt or innocence.
23 The guilt of a conspirator is not measured by the extent of
24 or the duration of his participation. Even if he participated
25 in it to a degree more limited than that of his

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co-conspirators, he is equally culpable so long as he was in fact a conspirator. Similarly, it is not required that a person be a member of the conspiracy from its very start. A defendant may join a conspiracy at any point while it is in progress, and be held responsible for all that has been done before he joined, and all that may be done thereafter during the existence of the conspiracy and while he remains a member of the conspiracy.

Moreover a conspiracy, once formed, is presumed to have continued until its objectives have been accomplished or until there has been an affirmative act by the members of the conspiracy to terminate it. Similarly, once a person is found to be a member of a conspiracy, he is presumed to continue his membership until the termination of the conspiracy or until he affirmatively withdraws or disassociates himself from it.

For a single act to be sufficient to draw an actor within the ambit of a conspiracy to violate the federal narcotics laws, there must be independent evidence tending to prove that the defendant in question had some knowledge of the broader conspiracy, or the single act itself must be one from which knowledge may be inferred. Thus, absent proof of knowledge of the broader conspiracy, a single act such as *transportation of a stolen car* or actual sale or purchase is insufficient evidence from which to draw an inference that a defendant

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2 knew about or acquiesced in the larger conspiracy. However,
3 conduct consisting of only involvement in a single transaction
4 may nevertheless be treated as rationally permitting the infer-
5 ence of knowledge of the broader conspiracy where the single
6 act itself shows so much familiarity with or high-level
7 participation in the overall conspiracy as to be in and of
8 itself indicative of the broader conspiracy.

9 Now let me instruct you as to how you are to con-
10 sider the acts and statements of alleged co-conspirators.

11 You will recall that throughout the trial the acts
12 and statements of one alleged co-conspirator in the absence of
13 other alleged co-conspirators were received only with respect
14 to the particular person or persons making them.

15 If you find that a conspiracy existed, then in
16 considering the second element, whether or not a particular
17 defendant was a member of the conspiracy, you may rely not only
18 on his own statements but on the statements and declarations
19 of the other alleged co-conspirators.

20 Moreover, if you find that a conspiracy existed,
21 then any act or declaration made during the conspiracy, and
22 in furtherance of it by a person found by you to have been a
23 member of the conspiracy may be considered against a defen-
24 dant, who you have found was also a member, even though such
25 act or declaration was made in the absence and without the

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knowledge of that defendant.

Conversely, such acts or declarations of a conspirator which were made before the existence or after the termination of the conspiracy or which were not in furtherance of the conspiracy, may be considered only against the person who made them.

In proving the charges against the defendants on trial before you, the Government introduced evidence of the acts and declarations of co-conspirators who are not on trial here and are not named as defendants. You may not draw any inference, favorable or unfavorable, towards the Government or the defendants on trial from the fact that certain persons were not named as defendants or conspirators or having been named, are not on trial before you now. You are not to speculate as to the reasons why certain individuals are not on trial or are not named as defendants. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Now we come to the third element you must consider as to Count One. If you have found that the alleged conspiracy existed and that the defendant whose guilt you are considering was a member of it, then you must consider the "overt act" requirement.

The offense of conspiracy is complete when the

1
2 unlawful agreement is made and any single overt act is done
3 by one of the alleged conspirators in furtherance of the
4 conspiracy.

5 By the term "overt act" we mean an act committed
6 in an effort to accomplish or further some object or purpose
7 of the conspiracy. The overt act in this sense need not be
8 a crime itself. It must, however, be an act which follows
9 from the conspiracy and is directed toward accomplishment of
10 the criminal purpose of the conspiracy. I will now read the
11 overt acts charged in the indictment:

12 [Read Overt Acts:]

In addition, the government must show that at least one overt act was committed in the Southern District of New York. I charge you that the Southern District of New York includes Manhattan, the Bronx and Westchester County, new York.

If you find beyond a reasonable doubt that such a conspiracy existed as charged in the indictment and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy offense is complete. It is complete as to each defendant found by you, the jury, beyond a reasonable doubt to have knowingly and wilfully been a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in Count 1 that the conspiracy existed from on or about January 1, 1975, and continuously thereafter up to and including April 19, 1977, I repeat that it is not essential for the government to prove that the conspiracy started and ended on or about those specific dates. It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

Similarly, it is not necessary for the government to prove that each member of the conspiracy committed or participated in any particular overt act since the act of any member of the conspiracy done in furtherance of the conspiracy becomes the act of all the other members.

Let me remind you that in order to find a defendant guilty under Count 1, you must find that he was a member of the conspiracy charged in the indictment and not some other conspiracy.

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Now let me turn to the substantive counts in the indictment. Because they involve the same statute, I will read Counts 2, 3, 7, 10, 12, 20, 21, and 25 together.

[READ Counts 2, 3, 7, 10, 12, 20, 21, and 25]

With respect to these counts, the applicable statute is the one I have already read to you in connection with Count 1, namely, Section 1343 of Title 18. Let me read it once again in pertinent part:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire [or] radio. . .communication in interstate or foreign commerce, any writings, signs, signals. . .or sounds for the purpose of executing such scheme or artifice [is guilty of a crime]."

In order to find a defendant guilty of the offense charged in any one of the counts I have just read to you, you must find that the government has proved as to him each of the following essential elements beyond a reasonable doubt:

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(1) that at or about the time alleged in that count the defendant devised or intended to devise, a scheme or artifice to defraud or a scheme or artifice to obtain money or property by means of false or fraudulent pretenses or representations;

(2) that the defendant acted wilfully and knowingly and with an intent to defraud; and

(3) that, for the purpose of executing the scheme, the defendant transmitted, or caused another to transmit, a communication by wire in interstate commerce.

The first element of the offenses charged which you must consider is whether the government has proved beyond a reasonable doubt that there existed either a scheme or artifice to defraud, or a scheme or artifice to obtain money and or property by false pretenses or representations. As used in this case the words "scheme" and "artifice" merely mean a plan for the accomplishment of an objective.

A scheme to obtain money or property by false representations refers to any plan by which one person seeks to obtain money or property from another by means of misrepresentations as to a material fact. Such misrepresentations may be made in two ways: (1) by statements of material facts which are not true; and (2) by the failure to state material facts which needed to be stated in order to permit a full understanding of the truth of the matters involved. A half truth may be no more honest than an outright falsehood and, therefore, a scheme to make false representations may be constituted by half truths which are calculated to mislead.

Furthermore, while a misrepresentation may be explicit, that is, an actual statement which misrepresents a fact, it may also be implicit. An implicit misrepresentation is a statement which, without specifically stating so, would lead one to believe that a fact is other than it really is. Such an implicit misrepresentation, if you find beyond a reasonable doubt that it was made, can satisfy the Government's burden of proof.

Of course, before you can find that there existed a scheme to obtain money or property by false representations, you must find that the facts allegedly misrepresented, whether by affirmative false statements or by the failure to state other relevant facts, were material to the matter under consideration. "Material" facts are facts which are reasonably necessary to a person before he can decide whether to act or not to act in regard to a particular matter.

In addition to a scheme to obtain money or property by false pretenses, the Government may also show a scheme to defraud. A "scheme to defraud" is a plan using any means, including but not limited to false pretenses, to obtain something of value by trick or deceit.

In deciding whether the government has satisfied its burden of proving the first element of the offenses charged in Counts 2, 3, 7, 10, 12, 20, 21, and 25, i.e., that there existed a scheme to defraud or a scheme to obtain money or property by false representations, you must decide whether the government has proved the particular scheme charged in the indictment.

There are six different fraudulent schemes alleged in the various wire fraud counts of this indictment. Counts 2 and 3 allege a scheme to defraud the Security National Rare Coin Company, San Antonio, Texas and to obtain its property, that is, gold coins. Count 7 alleges a scheme to defraud the Continental Coin Company, Minneapolis, Minnesota and to obtain its property, that is, gold coins. Count 10 alleges a scheme to defraud Dionisio Ramon Arenas and to obtain his property, a Hasselblad camera. Count 12 alleges a scheme to defraud Samuel Higginbottom and to obtain his property, a Mercedes Benz. Counts 20 and 21 allege a scheme to defraud the Polaroid Corporation, Paramus New Jersey and to obtain its property, SX-70 cameras. Count 25 alleges a scheme to defraud Milton Rusonik and to obtain his property, a Rolls Royce.

As to the second element, the government must prove beyond a reasonable doubt that Isiah Crutch and Louis Bas acted wilfully and knowingly. As I told you before, an act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of evil purpose or for such other innocent reason.

The government must also show beyond a reasonable doubt that the defendant you are considering acted with an intent to injure or defraud another. Intent to injure or defraud does not mean malice or ill will. It means to act knowingly and with the specific intent to deceive or cheat, for the purpose of either causing financial loss to another, or bringing about some financial gain to one's self.

If you have found that a defendant participated in a scheme to defraud and that such participation was wilful, knowing and with an intent to deceive, then you must consider whether the government has proved beyond a reasonable doubt the third essential element

-- that the specific use of wire communications in furtherance of the scheme to defraud charged in the respective counts, actually occurred and that these wire communications were transmitted in interstate commerce.

I charge you that a wire transmission includes a telephone call. "Interstate" simply means between two states, and "interstate commerce" would simply mean that sounds and signals comprising the telephone call moved from one state to another.

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If you find that the telephone calls described in the Indictment were made, then, as a matter of law, such calls constituted the transmission of sounds by means of wire communication in interstate commerce within the meaning of the statute.

Furthermore, it is not necessary for the Government to prove that the defendant whose guilt or innocence you are considering personally placed the telephone call in question, or, indeed, that any defendant placed the call. It is sufficient if the proof shows that the defendant in question took steps which he knew or reasonably could have foreseen at the time would naturally and probably result in the use of wire communications in interstate commerce, whether or not that defendant actually knew of the interstate call.

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I instruct you that under the law applicable to this case, each transmission of an interstate wire communication for the purpose of executing a fraudulent scheme constitutes a separate crime.

Furthermore, I charge you that the government need not prove that a scheme or artifice to defraud actually succeeded. Therefore, in order to convict, it is not necessary for you to find that a defendant realized any gain from the scheme or that the intended victim suffered any loss.

Now we will turn to Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26. Because these counts involve the same statute, I will read them together.

[READ Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26]

With respect to these counts, the applicable statute is one I have already read to you in connection with Count 1, namely, Section 2314 of Title 18 of the United States Code. Let me read it once again in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged. . .or counterfeited securities, knowing the same to have been falsely made, forged. . .or counterfeited [is guilty of a crime]."

In order to find either Isiah Crutch or Louis Bas guilty of causing falsely made, forged, and counterfeited securities to be transported in interstate commerce, you must find the following elements beyond a reasonable doubt.

First, that on or about the date set forth in each count, the defendant you are considering caused to be transported in interstate commerce certain securities;

Second, that the securities were falsely made, forged, or counterfeited;

Third, that the defendant knew that the securities were falsely made, forged, or counterfeited; and

Fourth, that the defendant acted with unlawful and fraudulent intent.

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With respect to the first element, I instruct you that as a matter of law a check is a security within the meaning of this statute. I have already instructed you as to the meaning of "interstate commerce" with respect to wire fraud. "Interstate commerce" here would simply mean that the checks involved moved from one state to another.

With respect to the second element of this offense, if you find that the checks that are the subject of these counts were not genuine obligations of the banks whose names they bear but rather were manufactured and used without the permission of that bank, you may find that they were falsely made and counterfeited. If you find that the checks were signed by individuals other than the bank officials authorized to sign such instruments, you may find that they were forged.

With respect to the third element, you must find beyond a reasonable doubt that the defendant you are considering knew that the checks were falsely made, forged or counterfeited. However, in order to prove a defendant guilty under this statute, the government need not prove that he knew that the checks were to be transported in interstate commerce. It need only prove that the defendant knew that the checks were falsely made, forged or counterfeited and that he caused, aided, abetted, or induced their transportation in interstate commerce.

With respect to the fourth element, you must find beyond a reasonable doubt that the defendant you are considering acted unlawfully and with fraudulent intent. As I have told you,

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fraudulent intent means to act knowingly and with the specific intent to deceive or cheat, for the purpose of either causing financial loss to another, or bringing about some financial gain to one's self.

Let me explain to you what aiding and abetting means. Title 18 of the United States Code, Section 2 provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Thus, a person who aids or abets another to commit an offense is just as guilty of that offense as he would be had he committed it himself.

Before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- the transportation of forged or counterfeited checks in interstate commerce -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

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In other words, if one, fully aware of what he is doing, plays a significant role in furthering and facilitating an act prohibited by law, he is equally as guilty as the person who actually and physically performed the act or acts, even though the latter played a greater part in the perpetration of the crime.

I will now turn to Counts 5, 6, and 24. These three counts involve the same statute and will therefore be read together.

Count 5 *Counts*
[READ Counts 5, 6, and 24]

With respect to these counts, the applicable statute is one I have already read to you in connection with Count 1, namely, Section 2314 of Title 18 of the United States Code. Let me read it again, in pertinent part:

"Whoever transports in interstate commerce any goods, wares, [or] merchandise. . . of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud . . . [is guilty of a crime]

In order to find either defendant Isiah Crutch or Louis Bas guilty of transporting stolen property in interstate commerce as charged in the indictment, you must find the following elements beyond a reasonable doubt.

First, that on or about the date charged in each count, the defendant transported stolen property or property taken by fraud in interstate commerce;

Second, that the value of the property was \$5,000 or more; and

Third, that the defendant knew the property had been stolen or taken by fraud.

With respect to the first element, the government must prove to you beyond a reasonable doubt that the goods in question were stolen or taken by fraud. Property is stolen when it is taken with criminal intent to deprive the owner of the rights and benefits of ownership. A person takes property by fraud when he acts knowingly and with the specific intent to obtain the property by cheating and deceiving the owner.

If you are convinced beyond a reasonable doubt that the goods in question were stolen or taken by fraud, you must then determine whether they were transported by the defendant you are considering from one state to another.

You must next be convinced that the property mentioned in each count was valued at \$5,000 or more. "Value" means the market value of ~~the market value of~~ the property involved. That is, the price that a willing buyer would pay to a willing seller. The property involved in Count 5 is a shipment of gold coins bearing a price of \$18,800; in Count 6, it is a shipment of gold coins bearing a price of \$6,790; and in Count 24, it is a shipment of 250 Polaroid SX-70 cameras bearing a price of \$33,000.

In order to prove the defendant guilty under this statute, the government need not prove that the defendant knew the stolen or fraudulently obtained goods were to be transported in interstate commerce. It need only prove that

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the defendant knew that the goods were stolen or fraudulently obtained and that he caused, aided, abetted, or induced their transportation.

As I have just told you, a person who aids or abets another to commit an offense is equally as guilty of that offense as he would be if he had committed it himself

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Before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- the transportation of stolen or fraudulently obtained property valued at \$5,000 or more in interstate commerce, in this instance -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

I will now turn to the remaining counts. They are Counts 9, 14, 16, 27, 28, and 29. Again, I will read them together since they involve the same statute.

[READ Counts 9, 14, 16, 27, 28, and 29]

The applicable statute with respect to these counts is Section 2312 of Title 18 of the United States Code. As with the other statutes, I have already read it to you in connection with the conspiracy count. I will read it once again in pertinent part:

"Whoever transports in interstate. . . commerce a motor vehicle. . . knowing the same to have been stolen. . . [is guilty of a crime]."

In order to find a defendant guilty of the offense charge in these counts, the government must prove beyond a reasonable doubt the following elements.

First, that the automobile named in each count had been stolen;

Second, that on or about the date in question, the defendant transported this motor vehicle in interstate commerce; and

Third, that the defendant knew the motor vehicle to have been stolen.

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With respect to the first element, I have already explained to you that property is stolen when it is taken with criminal intent to deprive the owner of the rights and benefits of ownership. It also means taken by fraud as well as outright theft.

To find that the motor vehicle in question was transported in interstate commerce you already know that you must be convinced beyond a reasonable doubt that the vehicle was transported from one state to another.

In order to prove the defendant guilty under this statute, the government need not prove that the defendant knew the stolen motor vehicle was to be transported in interstate commerce. It need only prove that the defendant knew that the vehicle was stolen and that he caused, aided, abetted, or induced its transportation.

You have already been instructed that a person who aids or abets the commission of a crime is just as guilty of that offense as he would be had he committed it himself. Let me remind you, however, that before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- in this instance, the transportation of a stolen motor vehicle in interstate commerce -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

You have heard testimony that some of the defendants have performed certain acts which occurred before or after the acts charged in the indictments. Let me repeat the instructions I gave you at that time. The defendants here are not being charged with those acts and you cannot use them to determine whether they committed the crimes charged in the indictment.

Nor may evidence of an alleged similar act be considered for any other purpose whatever, unless you first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the particular act charged in the indictment in this case.

However, if you do find, beyond a reasonable doubt, based solely on evidence other than ~~the~~ similar acts, that the defendants did any of the acts charged in the indictment in this case, then you may consider evidence as to ~~the~~ similar acts in determining the state of mind or intent of the defendants at the time they did those acts. That is to say, if prior ^{or simultaneous} similar acts have been established by the government then you may, but are not obliged to, draw the inference that, in doing the act charged in this case, the accused acted knowingly and intentionally, and not because of mistake or accident or other innocent reason.

There has been testimony that defendants Nicoleau and Bas, at the time of their arrests, each made certain statements that were exculpatory; that is, statements that tended to show their innocence. The government contends that those statements were false. If you find, beyond a reasonable doubt, that a particular defendant made false exculpatory statements, then such statements are circumstantial evidence of guilty consciousness. They may not be considered against any other defendant. Such statements, even if false, are not sufficient evidence by themselves to support a conviction.

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Now let me address myself to more general considerations which you must bear in mind during your deliberations.

First, I must emphasize again that there are four defendants on trial here and you must consider separately whether the defendants charged have been proven guilty beyond a reasonable doubt.

It is your duty to give separate and personal consideration to the case of each defendant. When you do so you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely with regard to the other defendants. Each defendant is entitled to have his case determined from the evidence in the case which may be applicable to him. The fact that you may find one of the accused guilty or not guilty of any particular count should not influence your verdict with respect to the other defendants or with respect to any other count.

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As I told you before, the government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. A defendant has the right to remain silent. He does not have to testify or produce any evidence or witnesses in his behalf, and you may not draw any inference or conclusion or form any prejudice because a defendant did not testify.

90 a

On the other hand, the law permits a defendant to testify in his own behalf if he wishes to do so, and Louis Bas has elected to testify in this case.

The testimony of a defendant must be considered by you as would the testimony of any other witness. You must determine, therefore, the credibility of Louis Bas' testimony and in so doing you must consider the deep personal interest which every defendant has in the outcome of his case. Indeed, it is fair to say that a defendant has the greatest stake in the outcome. A defendant's interest in the result of his trial is of a character possessed by no other witness. That interest requires that you receive such testimony with caution and subject it to the most careful scrutiny. However, it by no means follows that simply because a person has a vital interest in the end result that he is not capable of telling a truthful and straightforward story, and it is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

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Defendant Louis Bas has introduced evidence of his good reputation in his community for honesty, integrity and truthfulness. The introduction of such evidence bears upon the unlikelihood that a person with this character would perpetrate a fraud or the crimes charged in this Indictment, and, therefore, you should consider this evidence in the case in determining whether the prosecution has proved defendant

Louis Bas' guilt beyond a reasonable doubt.

Evidence of good reputation may, in itself, create a reasonable doubt as to guilt where without such evidence no reasonable doubt would exist.

On the other hand, if on all the evidence you are satisfied beyond a reasonable doubt that a defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit him merely because you believe that he is a person of good repute.

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The testimony of a character witness is a reflection of a reputation in the community. Testimony of character reputation is not to be taken by you as the witness' opinion as to the guilt or innocence of a defendant. The guilt or innocence of a defendant is for you and you alone to determine. Consequently, you may consider whether those with whom a defendant came in contact previously and with whom he established a community reputation were not informed as to matters bearing on his character. That is a matter for you to determine from all of the evidence.

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant, if he is convicted, to influence your verdict in any way or in any sense enter into your deliberation.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of a defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

I would like to point out that you should not enter the jury room with any preconceived pride of opinion. You should not be unwilling to be convinced by intelligent argument with your fellow jurors. Each juror has to answer to his or her own conscience, and each has to decide this case for himself or herself, but in so doing you should be willing to consider the views of the other jurors and to talk things out and try your best to reach a unanimous agreement.

Your verdict must be one with which each juror agrees.

If during your deliberations you deem it necessary to have a copy of the indictment, or desire any of the exhibits, they will be sent in to you on request. If you wish any portion of the testimony read, any of the tapes replayed, or the court's charge reread, that will be done.

In conclusion let me say: Every criminal case is important. It is important to the government and it is important to the defendant. It is your obligation to decide the case on the evidence and on the law as I have charged it to you; I give the case to you with the assurance that you will do just that.

CS

1 bsrf 2 Abbott-direct
2 what the problem was and he said something about the license
3 plate -- that the owner of the car didn't want to give
4 up the license plate.

5 I didn't know what to do with this situation
6 and Eugene Crutch was in town at that time, and I called
7 Mr. Eugene Crutch and asked him if he could assist me and
8 he said that he would and I told Elie to wait there and I
9 called Elie back and it was at this time that I told
10 him to go ahead and make the purchase of the car.

11 Q What happened after that?

12 A To the best of --

13 Q You were calling from where?

14 A A phone booth right outside my home.

15 Q Continue, please.

16 A Then there was several conversations because it
17 didn't seem like it was going smoothly and I asked Elie
18 several times, "Are you sure it's okay? Are you sure
19 it's okay?"

20 He said, "Yes," he was positive, everything was
21 okay.

22 And so Eugene was waiting for me to return
23 the call to him.

24 Q Miss Abbott, do you know where Eugene Crutch
25 was?

1 bsrf 3

Abbott-direct

2 A I think he was staying at one of the hotels
3 in the city. I can't remember now. And Elie -- I called
4 Elie back and I said, "Okay, go ahead." And so he went
5 ahead and transacted the purchase of the car, called
6 me back, he said, "Okay, I've got the car, but I don't
7 have the license plate on it."

8 And I called Eugene at this time and told him
9 where Elie was -- Elie had given me the address of where
10 he was standing on some corner, and Eugene said that he
11 would go down there and help Elie.

12 Q What was the next thing you heard about this, Miss
13 Abbott?

14 A I called Elie's home. He was staying with a girl,
15 and I asked if he had returned there, if he was all right.

16 Q Miss Abbott, when did you place this call, the
17 same evening or the next evening?

18 A The same evening. And she said that he was okay.
19 I said all right, and I called Eugene and I couldn't
20 reach Eugene right away, it took -- it was a little while,
21 and he said that he had parked the car and everything
22 was okay.

23 Q Did he tell you where he had parked it?

24 A No, he didn't.

25 Q Miss Abbott, did there come a time when --

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bsm6

Abbott - direct

A It was very simple. Again I met -- I believe it was at that same Italian restaurant, he was outside the restaurant, I met him. We went to his car. I gave him the \$500 and then we went to dinner.

Q How did you pay him?

A In cash.

Q Did he give you a receipt?

A No.

Q Do you recall any conversation at dinner?

A All our conversation was always about Ike and the trouble he was in and whatever; it was always about Ike.

Q Miss Abbott, I now would like to go back, if I may, to December of 1975.

Did you have a conversation with Eugene Crutch at that time?

A I had several conversations with Mr. Eugene Crutch.

Q Did you have a conversation with him about a Continental?

A Oh, yes.

Q Can you tell us about that, please?

A Eugene came to the house --

Q By the house, where do you mean?

A 67 East 11th Street -- and asked me if I had a

95a

1 bsm7 Abbott - direct 253
2 blank check that he could use, that he was trying to purchase
3 a car.

4 I said, of course, and I proceeded to give him
5 the check. I left the room --

6 Q Miss Abbott, did you have a check with you or
7 did you have to go to the safety deposit box?

8 A No, I did have an extra check at the house at
9 that time.

10 Q Continue, please.

11 A I left the room and I let Eugene fill out whatever
12 was necessary on the check himself. I gave him access to
13 the paymaster machine and the typewriter.

14 Q Your testimony is that you did not fill out the
15 check yourself?

16 A No, I did not.

17 Q I direct your attention to Government's Exhibit
18 20 for identification. Can you identify that?

19 A Yes. I remember Exhibit 20 Id.

20 Q What is that?

21 A It is a cashier's check, Barclays, Cashier's
22 check in the amount of \$9,850.

23 Q Is that the check that you gave to Mr. Crutch?

24 * A Yes, to the best of my knowledge, yes, it is.

25 Q What happened after you gave it to Eugene Crutch?

bsm8

Abbott - direct

1 bsm8
2 * A Later on that night I received a telephone call
3 that --

4 Q From whom?

5 A A friend of Eugene's. I can't remember his name.
6 I don't remember his name. It was just a friend who called
7 to let me know that Eugene had been arrested.

8 Q Miss Abbott, do you recall the arrest taking
9 place on the same date that the check was given?

10 MR. RICHMAN: Your Honor, I respectfully submit
11 that she has already answered the question, that evening
12 she received a phone call that Eugene was arrested.

13 THE COURT: You may answer the question. Over-
14 ruled.

15 A Would you repeat it.

16 Q Miss Abbott, I'm trying to ask you: when did you
17 receive the call that Mr. Crutch was arrested?

18 A That was not the same night. It took -- they had
19 possession of the car for a couple of days because --

20 Q Let's take this one step at a time.

21 Do you recall the day that you gave the check to
22 Mr. Eugene Crutch?

23 A I think it was just before Christmas. They tried
24 to sell the car --

25 Q It was on or about the 23rd or the 24th of December?

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bsm9

Abbott - direct

A Yes.

Q What was the next thing you saw happen?

A Okay, now I remember it. Because Ike was furious
with me for giving him the check, I --

MR. RICHMAN: Your Honor, I move to strike out
the answer as not responsive.

THE COURT: The answer is not responsive, Miss
Abbott.

I think you should focus on the question. The
question is, after you gave him the check, which was on or
about December 23, what do you know happened next of your
own personal knowledge, not what somebody told you.

THE WITNESS: Okay. A couple of days later
Eugene came to my house with the car that he had procured
and took me downtown in it.

Q Do you recall what kind of a car it was?

A It was baby blue and -- I can't remember exactly,
it was a big car, baby blue in color; I think it was a
Lincoln, I'm not sure.

And then it was a couple of days later they
came down to the house --

Q By "they" who do you mean?

A It was New Year's Eve.

Q By "they" whom are you referring to?

bsml0

Abbott - direct

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2 A Excuse me. Eugene and a young man named Lloyd.

3 THE COURT: I'm getting confused. There was a
4 conversation a few days after December 23, Mr. Eugene Crutch
5 came by your house and took you for a ride in the car?

6 THE WITNESS: Took me downtown.

7 THE COURT: Now you are talking about something
8 that happened subsequent to that; is that correct?

9 THE WITNESS: That is correct.

10 THE COURT: All right.

11 BY MR. EPSTEIN:

12 Q When, if you recall, were you visited by Eugene
13 Crutch and this man named Lloyd?

14 A It was New Year's Eve.

15 Q What happened on the occasion of that visit,
16 Miss Abbott?

17 A Eugene told me at that time that they were going
18 to sell the car.

19 Q Did he tell you anything else?

20 A That he was going to have Lloyd try and make the
21 sale of the car.

22 Q What is the next thing that happened?

23 A And that was the night that I received the tele-
24 phone call that Eugene and Lloyd had been arrested.

25 MR. EPSTEIN: Your Honor, I offer Exhibit 24 in

1 3b am jgrf 1 Abbott-redirect

2 Q Now, Miss Abbott, I am directing your attention
3 to Exhibit 18.

4 Did Mr. Crutch have anything to do with the
5 preparation of that check?

6 A No, I don't believe so. I believe I did this.

7 Q You did that.

8 A Yes.

9 Q So your recollection is that the only check Mr.
10 Crutch was involved in preparing --

11 MR. RICHMAN: I object to this constant leading
12 of the witness. I have been patient for three days
13 and that's all the government has done. Can't she tell
14 her story without being told verbatim what to answer?

15 THE COURT: I think that that is fair, Mr. Richman.
16 You have been doing a considerable amount of
17 leading, and I've asked you to stop it, and I am now going
18 to insist that you do.

19 MR. EPSTEIN: Yes, your Honor.

20 Q What is your present recollection as to who was
21 involved in the preparation of each of those two checks?

22 A On Exhibit 18 Id., a Barclay's cashier's check
23 made out to Mr. Michael Kalimian, I prepared this check,
24 typed it and filled in on the Paymaster "\$7,900."

25 On Exhibit 20 Id. I may have typed it or Eugene

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jgm

Williams - direct

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Q Did he tell you were to go?

A Yes. I got the address. He gave me.

Q Did he tell you anything about the car?

A No. He just tell me, you know, look at it and tell him if it is, you know, sharp, nince-looking, or whatever. So I went up and take a look at it.

Q Mr. Williams, what did you do after that?

A I went back and tell him how the car was, clean, you know, the way it is.

Q Did there come a time when you went to see the car?

A Yes.

Q Tell us about that, please.

A Well, I went up to see the car and look it all over and see the car was clean, you know, what year it was, and so forth.

Q Who owned the car, if you know?

A I think it is a Daniel Henderson.

Q Where did he live?

A 152nd and Broadway.

Q And what did you do when you went to see Mr. Henderson?

A Well, the car was in a garage, and we went over to the garage and take a look at the car, and he showed me

jgm2

Williams - direct

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the car, you know, and so forth.

Q After he showed you the car, what did you do?

A Well, I then returned back to Crutch, you know, and tell him the car was in good condition, it was clean and so forth.

Q I direct your attention to the following day, Mr. Williams. What happened on the following day?

A On the following day -- the following day I went up to see Henderson again about the car.

Q And before you went to see Mr. Henderson, what happened?

A Before I was, you know, talking with Crutch.

Q What did he say to you? What did you say to him?

A He said, "Go back up there to see Henderson again. I bought a car."

Q Did he say anything else?

A No. I don't think he did.

Q Did he give you anything?

A On the first day or the second day?

Q The second day, we are talking about.

A Oh, on the second day he gave me a check and I went up to Henderson.

Q Did he talk to you about buying the car?

1 jgm3 Williams - direct
2 A Excuse me?
3 Q Was there any conversation about purchasing
4 the car?
5 A About purchasing the car?
6 Q Yes.
7 A Not at the moment, no.
8 Q Mr. Williams, we are talking about the second
9 time you went to see Mr. Henderson. Do you have that in
10 mind?
11 A Yes, I have it in mind.
12 Q Now, before you went to see Mr. Henderson, what
13 happened?
14 A Before?
15 Q Yes.
16 A Well, I spoke to Crutch and he said I have to go
17 up, you know, take an envelope up there to see him.
18 Q Take what?
19 A An envelope. It is in a suitcase.
20 Q What happened after that?
21 A So I took the suitcase and I bring it over to
22 Henderson's placed on 153rd and Broadway.
23 Q What happened when you got there?
24 A Well, I met Henderson on the corner on 152nd and
25 Broadway and we then walked up to 153rd and I gave him the

jgm4

Williams - direct

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suitcase and he then take the contents out of it.

Q What happened to the contents of the suitcase?

A Henderson took it out.

Q What happened after that?

A Well, he took it out, and there was a check in there. He looks at it and I think he put it back in the envelope and he then gave me some papers for the car and I took the car back.

Q Who took the car back?

A I did.

Q Mr. Williams, I show you Exhibit 20 in evidence. Take a look at it, please. See if you can identify it.

A Yes, this looks like it, looks like the check.

Q Do you remember what bank the check was drawn on?

A I think it is Barclay's. I don't remember too clearly.

Q Mr. Williams, what happened after you got the car from Henderson?

A I then take the car back and gave it to Crutch.

Q Excuse me?

A I then took the car back and give it to Crutch, with the papers.

Q Where did you give it to him?

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Williams - direct

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A I think it was 52nd and Broadway, some place.

Q How did you give him the car?

A I just, you know, got out of the car and he got in.

Q Did he drive you anywhere or did you just walk away?

A No. I walked away then, I guess.

Q Did you have any other conversations with Mr. Crutch about the car after that?

A No. Then I went home.

MR. LEVINSON: Your Honor, I would like to make it clear that all references to Mr. Crutch at this point are Eugene Crutch and not Mr. Isiah Crutch.

THE COURT: I think that the jury has been following the testimony.

Q Mr. Williams, I am not now talking about that day, but in subsequent days did you have further conversations about this with Eugene Crutch?

A After I delivered the car to him?

Q Yes.

A I think it was approximately four days after, I spoke to him again.

Q What happened when you spoke to him again?

A I was then supposed to come back and see hi m.

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Williams - direct

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Q What happened at that time?

A Well, I went back to see him again, I think it was four days after. I went back to Brooklyn this time to see him. And then we get in the car and went to New Jersey.

Q What did you do in New Jersey?

A I went to a couple of car dealers.

Q Where was Mr. Crutch, if you know?

A Where was he?

Q Yes.

A He was in another car.

Q In another car?

A Yes.

Q You took two cars up to New Jersey?

A Yes.

Q How many car dealers did you go to?

A We went to about three.

Q What did you do at the car dealers?

A I asked them the price, you know, how much the car was worth.

Q Did you sell the car that day?

A No.

Q What happened at the end of that day?

A I returned back to New York. I came back to New York.

jgm

Williams - direct

~~834~~

Q Did you have another occasion to go out to New Jersey?

A I think it was the following day that we went back to New Jersey again.

Q What happened on that day?

A I went to a couple of car dealers again.

Q What happened when you went to the car dealers?

A The same thing. I asked them what the car was worth, you know.

Q What did you do at the end of that day?

A Well, I think I went back -- I went to the car dealer that I went to before, twice, one day before, and then the next day I went back to see him again.

Q What happened? Did you sell the car on that day?

A No. He asked me if I have the papers for the car. So I tell him no. So he sent me to get it. So I went back and got it from Crutch and I took it over to him.

Q Where was Mr. Crutch while you were in the car dealer's?

A He must be a couple of blocks away.

Q Now, on this occasion did you go out in one car or in two cars?

A Two cars.

Q Did there come a time when you went back to New York?

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jgm

Williams - direct

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A No. I didn't get back to New York that day at
all.

Q All right. What happened on that day?

A I got busted that day.

(Continued on next page.)

bsrf 7

Williams-cross

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850

County this story?

A Excuse me?

Q Did you tell the District Attorney of New York County that Mr. Crutch was involved with you on a stolen car?

A He was arrested with me.

Q In New York County?

A In New Jersey.

Q Was he arrested in New York?

A I don't know.

Q Was he tried with you?

A No.

Q This case that just finished in March, across the street at 100 Centre Street was the People of the State of New York against Lloyd Williams, wasn't it?

A Yes.

Q It didn't include Eugene Crutch, did it?

A It was obvious.

Q Eugene Crutch didn't steal the car?

A I did.

THE COURT: I don't understand, Mr. Richman.

MR. RICHMAN: I have no further questions, your Honor.

THE COURT: Mr. Eaton?

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OCT 27 1977
U.S. ATTORNEY
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